UNITED NATIONS

A

General Assembly

Distr.
GENERAL

A/45/523
22 October 1990
ENGLISH
ORIGINAL: ARABIC/ENGLISH/
FRENCH/SPANISH

Forty-fifth session
Agenda item 94

ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Respect for the right of everyone to own property alone as well as in association with others and its contribution to the economic and social development of Member States

Report of the Secretary-General

CONTENTS

		Paragraphs	Page
I.	INTRODUCTION	1 - 5	3
II.	INFORMATION RECEIVED FROM GOVERNMENTS		4
	Australia		4
	Bolivia		4
	Canada		14
	Colombia		15
	Egypt		18
	Kenya		28
	Pakistan		29
	Panama		29

90-27053 2069d (E)

/...

best copy available

CONTENTS (continued)

		Page
	Portugal	30
	Saudi Arabia	32
	Sudan	32
	Turkey	35
	United States of America	36
	Yugoslavia	38
III.	INFORMATION RECEIVED FROM UNITED NATIONS BODIES	40
	Office of the Under-Secretary-General for International Economic and Social Affairs	40
	Committee on the Exercise of the Inalienable Rights of the Palestinian People	41
	United Nations Centre for Human Settlements (Habitat)	41
	Economic and Social Commission for Western Asia	42
IV.	INFORMATION RECEIVED FROM SPECIALIZED AGENCIES	42
	Food and Agriculture Organization of the United Nations	42
	United Nations Educational, Scientific and Cultural Organization	43

I. INTRODUCTION

1. In its resolution 43/123 of 8 December 1988, the General Assembly requested the Secretary-General to seek the views of Member States and of the specialized agencies and other competent bodies of the United Nations system on the means whereby and the degree to which the right to own property alone as well as in association with others contributes to the development of individual liberty and initiative, which serve to foster, strengthen and enhance the exercise of other human rights and fundamental freedoms. The Assembly suggested that Member States and the other organizations concerned might wish to address, in particular, the right to own the following types of property:

(a) Personal property, including the residence of one's self and family;

(b) Economically productive property, including property associated with agriculture, commerce and industry.

The Assembly further requested the Secretary-General to report his findings to it at its forty-fifth session.

2. In its resolution 43/124 of 8 December 1988, the General Assembly requested the Secretary-General, in preparing his report in accordance with resolution 43/123, to take into account resolution 43/124.

3. Pursuant to these resolutions, the Secretary-General invited, by a communication dated 9 February 1990, Member States, specialized agencies and other competent bodies of the United Nations to submit their views on the subject.

4. As at 19 October 1990, the following Governments had submitted substantive information: Australia, Bolivia, Canada, Colombia, Egypt, Kenya, Pakistan, Panama, Portugal, Saudi Arabia, Sudan, Turkey, United States of America and Yugoslavia. Information was also received from the Office of the Under-Secretary-General for International Economic and Social Affairs, the Committee on the Exercise of the Inalienable Rights of the Palestinian People, the United Nations Centre for Human Settlements (Habitat), the Economic and Social Commission for Western Asia, the Food and Agriculture Organization of the United Nations and the United Nations Educational, Scientific and Cultural Organization.

5. The present report compiles the substantive information received. Any further material, if any, will be submitted in addenda to this report.

II. INFORMATION RECEIVED FROM GOVERNMENTS

AUSTRALIA

[Original: English]

[28 June 1990]

1. The protection of real and personal property in private hands has always been a fundamental precept of the Common Law as developed in Australia. This concern is reflected in the Australian Constitution which provides a guarantee against acquisition of property by the Commonwealth Government, in the following terms:

> "51. The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good Government of the Commonwealth with respect to ...;
>
> (xxxi.) The acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws;"

2. The distinguished Australian jurist, Sir Owen Dixon, former Chief Justice of the High Court of Australia, has provided a succinct analysis of this provision:

> "Section 51 (xxxi) serves a double purpose. It provides the Commonwealth Parliament with a legislative power of acquiring property; at the same time as a condition upon the exercise of the power it provides the individual or the State affected with a protection against governmental interferences with his property rights without just recompense ... In requiring just terms s 51 (xxxi) fetters the legislative power by forbidding laws with respect to acquisition on any terms which are not just Bank Nationalisation Case (1948) 76 CLR 1 at 349-50)."

BOLIVIA

[Original: Spanish]

[6 June 1990]

1. The Constitution of Bolivia, in its first part, refers to the person as a member of the State and, in Title One, sets forth the fundamental rights and duties of the person. The relevant articles of the Constitution state expressly:

> Article 7. "Every person has the following fundamental rights, in accordance with the laws governing their exercise:
>
> "(a) To life, health and safety;
>
> "(b) To express his ideas and opinions freely, by any means of dissemination;

"(c) To work and engage in commerce, industry, or any other lawful activity, in conditions which are not detrimental to the public interest;

"(e) To receive an education and acquire culture;

"(f) To teach under the supervision of the State;

"(g) To enter, remain in, travel through, and depart from the national territory;

"(h) To make petitions, individually or collectively;

"(i) To own property, individually or collectively, provided it serves a social purpose;

"(j) To just fair remuneration for his labour ensuring for himself and his family an existence worthy of human dignity;

"(k) To social security, in the form prescribed in the Constitution and the laws."

Article 8. "Every person has the following fundamental duties:

"(a) To obey and comply with the Constitution and the laws of the Republic;

"(b) To work, according to his capacity and capabilities, in socially useful activities;

"(c) To acquire, in proportion to his financial capacity, to payment for public services;

"(e) To care for, feed, and educate his minor children, and to protect and support his parents if they are in a state of illness, poverty or need;

"(f) To perform any civic and military services which the nation may require for its development, defence and conservation;

"(g) To co-operate with the organs of the State and the community in social service and security;

"(h) To safeguard and protect the property and interests of the community."

2. The foregoing subparagraphs are supplemented by the following provisions:

Private property

Constitution

Article 22. "Private property shall be guaranteed provided that the use made thereof is not detrimental to the public interest.

READEX FICHE

"Expropriation shall be carried out for reasons of public benefit or where the property does not serve a social purpose, in accordance with the law and for just compensation."

Article 23. "Property shall never be confiscated as punishment for political offences."

Article 25. "Within 50 kilometres of the frontiers, foreigners shall in no capacity acquire or own land or subsoil, directly or indirectly, individually or as a company, under penalty of forfeiture to the State of the property acquired, except in case of national necessity so declared by special law."

Article 28. "The property of the Church, of religious orders and congregations, and of institutions engaged in educational, welfare and charitable pursuits shall enjoy the same rights and guarantees as those enjoyed by private individuals."

Article 166. "Labour is the basic source for the acquisition and holding of agrarian property, and the right of rural workers (campesinos) to an allotment of land is established."

Article 167. "The State does not recognize the latifundio. The existence of communal, co-operative, and private ownership of land is guaranteed. The forms of ownership and changes thereof shall be established and regulated by law."

Article 169. "The rural homestead (solar campesino) and the small-holding are declared indivisible; they shall constitute the essential minimum and shall have the status of an unattachable family patrimony under the law. Medium holdings and agricultural enterprises recognized by law shall be entitled to the protection of the State provided that they serve an economic and social purpose, in accordance with the development plans."

Civil Code

Article 105. "I. Ownership is a legal power which permits the use, enjoyment and disposal of property and shall be exercised in a manner compatible with the public interest, within the limits of the law and subject to the obligations established by law.

"II. An owner may claim his property from a third party and engage in further action to defend his property in accordance with the provisions in volume V of this Code."

Article 106. (Social function of ownership)

"Ownership shall serve a social purpose."

Article 107. (Abuse of the right)

"An owner shall not commit any act for the sole purpose of harming or annoying others and, in general, shall not be permitted to exercise his right in a manner contrary to the economic or social purpose for which the right has been conferred upon him."

Article 108. (Expropriation)

"I. Expropriation shall be admissible only against payment of just and prior compensation, in the following cases:

"1. In the public interest;

"2. When ownership of property does not serve a social purpose.

"II. Public interest and failure to serve a social purpose shall be defined under special laws which shall also regulate the conditions and procedure for expropriation.

"III. If the property expropriated in the public interest is not earmarked for the purpose for which it was expropriated, the owner or his assigns may withdraw it subject to returning the payment received. Compensation shall be paid for damages following an expert evaluation."

Article 115. (Exercise of the right to property to the detriment of neighbours)

"I. When exercising his right, especially when engaged in an industrial or commercial activity, the owner shall refrain from any act that might be detrimental to neighbouring properties or to the safety and health of those living in them or disturb their peace.

"II. This provision shall apply also to persons who own and to persons holding the property."

Article 116. (Buildings in danger of collapse and trees constituting a danger)

"I. Property owners shall be required to maintain their property in good condition, so that it neither jeopardizes nor affects the safety of third parties.

"II. Where a building is in danger of collapse, neighbours may demand that it be demolished or that the necessary repairs be made, as the case may be.

"III. Where a tree constitutes a danger, it may be uprooted or pruned."

Article 117. (Nuisances)

"I. Property owners shall prevent odours, smoke, soot, heat, light from illuminated signs, annoying vibrations or noise or other nuisances from reaching neighbouring properties, where such nuisances exceed the normal neighbourhood levels. The nature of the premises and the purpose for which the buildings are used shall be borne in mind, and property rights and the requirements of development shall in any case be reconciled.

"II. This provision shall also apply to owners and to persons in possession of the property."

Agrarian Reform Law

Article 2. "The State recognizes and guarantees private ownership of agricultural land where the ownership serves a useful purpose for the nation; it shall plan, regulate and rationalize exercise of such ownership and seek to distribute the land equitably so as to ensure the freedom and economic and cultural well-being of the Bolivian people."

Article 5. "Private ownership of agricultural land shall be recognized and vested in natural or juridical persons so that they may exercise their right in accordance with civil law and the provisions of this Decree-Law. The State shall recognize only the forms of private ownership of agricultural land specified in the following articles."

Article 6. "The homestead (solar campesino) serves as a rural abode and is not sufficient to meet the subsistence needs of a family."

Article 7. "The small holding (propiedad pequeña) is one which the farmer and his family work on their own and which yields enough to meet their needs efficiently. While the farmer works on his own, he may have occasional helpers for certain chores."

Article 8. "The medium-size holding (propiedad mediana) is larger than the so-called smallholding, and, while it does not resemble a capitalist farm, it is cultivated with the help of paid workers or machines, and most of its yield is sent to market."

Article 10. "The farm co-operative (propiedad agraria cooperativa) comprises:

"(a) Property granted to farmers who form a co-operative for the purpose of obtaining the land, preparing it for cultivation and settling there;

"(b) Small and medium-size holdings pooled in order to form the capital of the co-operative;

"(c) The lands of farmers who were awarded the former large estates (latifundios) and organized a co-operative in order to cultivate them;

"(d) The lands belonging to agricultural co-operatives, of whatever type not included in the preceding paragraphs."

Article 11. "An agricultural enterprise (empresa agrícola) is one in which substantial additional capital has been invested, which employs paid workers, and in which modern techniques are used - except, in the last case, for areas where the terrain is uneven. Details of these factors will be given in special regulations."

Article 12. "The State does not recognize the latifundio, i.e. the large estate comprising substantial rural property (of variable size depending on its geographical situation) which remains undeveloped or underdeveloped, under the extensive forming system, using outdated implements and methods and resulting in a waste of human effort, or because the land is leased out to produce income. As regards land use in the Andean region, property of this type has been granted in parcelas (parcels), pegujales (small holdings), sayañas, aparcerías (holdings for sharecropping) or under similar arrangements. Owing to the imbalance in the factors of production, the return from such lands comes essentially from the increased value generated by the farmers working as serfs or tenant farmers, which the landowner appropriates as earned income. This is a system of feudal oppression which is reflected in agricultural backwardness and a low standard of living and culture for the rural population."

Article 13. "The maximum area of private holdings shall be determined solely on the basis of the areas that can be farmed economically."

Article 30. "The latifundio (large estate) shall cease to exist. Large corporate farms and other large concentrations of land in the hands of individuals and entities which, by virtue of their legal structure, prevent equitable distribution of land among the rural population, shall be prohibited."

Article 52. "For the purposes of this Decree-Law, undivided holdings shall be deemed to be divided into as many holdings as there are co-owners."

Article 56. "Social welfare institutions operating schools, shelters and hostels which are supported by income from farms may own property no larger than three times the size of a medium-size holding situated in the same geographical region. Settlers on such property shall be given land thereon. Feudal farming systems shall be prohibited."

Article 57. "Indigenous communities shall be the private owners of the lands which they own jointly. Family-owned lots, so designated on the basis of reinspections or by tradition, within each community shall be the private property of the family."

Article 58. "Property of indigenous communities shall be inalienable, except in the cases to be established in special regulations. Ownership of such property shall give rise to all the rights and obligations pertaining to individually-owned and co-operatively-owned farms."

Article 59. "The indigenous inhabitants of each community shall, with the advice of State experts, regroup the parcels of land to ensure the efficient use thereof."

Article 60. "Members of the indigenous community shall not be required to render personal services or to make contributions in kind. Any political, military, municipal or ecclesiastical authorities demanding such contributions shall be deemed guilty of abusing authority."

Article 61. "Landless rural inhabitants living in an indigenous community without being members thereof and working for the owners of the lands shall be entitled to a part of the uncultivated land, the size of which shall not exceed that of the average parcel owned by a family of the newcomer category."

Criminal Code

Article 326. (Theft) ...

Article 329. (Larceny)

"Any person having a chose in action misappropriated from the lawful owner, to the detriment of that person or of a third party, shall be given a work sentence of one to six months."

Article 331. (Robbery)

"Any person who misappropriates a chose in action by force, or by inflicting violence on or intimidating persons, shall be sentenced to deprivation of liberty for one to five years."

Article 337. (Stellionatus)

"Any person who sells or encumbers, as unattached, property which is in litigation, under attachment or mortgaged, and any person who sells, encumbers or leases the property of others as if it were his own, shall be sentenced to deprivation of liberty for one to five years."

3. The foregoing legal provisions are relevant to the Universal Declaration of Human Rights (art. 17). Similarly, Part III (Special régimes), Title One (Economic and financial régime), chapter II, of the Constitution of Bolivia refers to national property.

Public - State property

Constitution of the State

Article 136. "In addition to the property designated by law as being in the domain of the State, the soil and subsoil with all their natural resources; the lake, river and medicinal waters; and the physical elements and forces susceptible of utilization are in the domain of the State. The law shall

establish the status of this domain and the provisions governing the concession and allocation thereof to individuals."

Article 137. "The assets in the patrimony of the nation constitute public property which is inviolable, and it is the duty of every inhabitant of the national territory to respect and protect it."

Article 138. "The nationalized mining groups are part of the patrimony of the nation as one of the bases for the development and diversification of the economy of the country, and they shall not be transferred or allotted to private enterprises under any form of title of ownership. The top-level management and administration of the State mining industry shall be entrusted to an autonomous entity having powers to be specified by law."

The autonomous entity referred to in this article is the public enterprise called Corporación Minera de Bolivia (Bolivian Mining Corporation).

Article 139. "Deposits of hydrocarbons, regardless of the state or form in which they are found, shall be in the direct, inalienable and indefeasible domain of the State. No concession or contract shall confer ownership of the deposits of hydrocarbons. The exploration, exploitation, marketing and transport of hydrocarbons and their derivatives shall be the responsibility of the State. The State shall exercise this right through autonomous entities or through time-limited concessions and contracts to mixed companies engaged in joint operations or to individuals, in accordance with the law."

Article 140. "The promotion and development of nuclear energy shall be a function of the State."

Article 144. "The programming of economic development of the nation shall be carried out by means of the exercise and furtherance of national sovereignty. The State shall periodically formulate a general plan for the economic and social development of the Republic, the implementation of which shall be mandatory. This scheme shall include the State, mixed and private sectors of the national economy.

"When private enterprise contributes to the improvement of the national economy, it shall receive the encouragement and co-operation of the State."

Article 157. "Labour and capital shall enjoy the protection of the State. The law shall regulate their relationship by establishing rules concerning individual and collective contracts, minimum wages, maximum working hours, work by women and minors, paid weekly and annual days of rest, holidays, bonuses, premiums, and other systems for sharing in the profits of an enterprise, compensation for time worked, dismissals, occupational training, and other social and protective benefits for workers.

"It shall be a function of the State to create conditions which will guarantee employment opportunities, work security, and fair remuneration for all."

Article 168. "The State shall plan and promote the economic and social development of the rural communities and agricultural co-operatives."

Agrarian Reform Law

Article 1. "The soil, subsoil and the territorial waters of the Republic belong by original right to the Bolivian nation."

Article 3. "As an addition to the property recognized by the laws in force to belong to the public domain are the highways, even where they have been created by private individuals, the lakes, ponds, rivers and all physical forces susceptible of economic utilization."

Article 4. "Uncultivated lands, lands that revert through the lapse of a concession or for any other reason, unoccupied lands situated outside the urban radius of towns, lands belonging to the State bodies and autonomous entities, and lands deemed to be forests by the laws in force, shall be part of the patrimony of the State."

Article 50. "Agrarian properties belonging to the organs of the State, universities and autonomous institutions shall be non-attachable, provided that they are used for the purposes that determined their acquisition. Settlers in those properties shall be provided with lands therein."

Article 51. "The institutions referred to in the preceding article may acquire extensions exceeding the maximum limit established for rural property, provided that they serve a purpose of manifest utility to the community."

Article 50. [sic] "Indigenous communities must plan, with the advice of State experts, the redistribution of small holdings, for the purpose of rational land use."

Article 76. "All roads, ports and paths are for public use. Waters and trees necessary for building houses and for other domestic uses shall also be for public use."

Article 223. (Destruction of or damage to State assets and national wealth)

"Any person who destroys, damages, misappropriates or exports an asset in the public domain, a source of wealth, monuments or objects belonging to the national archaeological, historical or artistic heritage, shall be sentenced to one to six years' deprivation of liberty."

Article 224. (Anti-economic conduct)

"A public official or other person exercising managerial or other duties involving responsibility in State enterprises or institutions, who causes, through maladministration, technical mismanagement, or for any other reason, damage to their patrimony or to the interests of the State, shall be sentenced to one to six years' deprivation of liberty.

"If such person acts culpably, the sentence shall be from three months' to two years' rigorous imprisonment."

Family Code

Article 163. (Charges)

"Common property shall be assigned to satisfy the needs of the spouses and to the maintenance and education of the children."

Article 164. (Administration and disposition of common property)

"Common property shall be administered by both spouses. Expenditures incurred and obligations contracted by one party for satisfying mutual needs and the children, shall also be binding on the other. Instruments for the disposition of common property as well as loan and other contracts conceding the use or enjoyment of property shall require the consent of both spouses. In this regard, the provisions governing joint ownership of property held in community by husband and wife may also be applied."

Article 165. (Earnings from work)

"Earnings from the work of each party may be administered and invested freely; but if either spouse ceases to make a contribution to the mutual expenditure and to the maintenance and education of the children, the other may request attachment and direct delivery of the appropriate share."

Article 166. (Personal property)

"Personal property shall be administered and disposed of freely by the spouse to whom it belongs."

Article 167. (Termination of the union)

"The free conjugal union is terminated by death or at the wish of one of the spouses. However, in the latter case that spouse shall retain his or her responsibilities."

Article 168. (Death)

"If the union is terminated through the death of one of the spouses, the survivor shall take the half of the common property to which he or she is entitled, and the other half shall be distributed among the children; where there are no children, the provisions of the Civil Code in matters of estate shall apply.

"The survivor shall have a share in personal property, on an equal basis with each of the children.

"Where a will exists, it shall be executed in so far as it does not conflict with the foregoing provisions.

"Social benefits and social security shall be governed by the relevant specific rules."

Article 169. (Unilateral breach)

"In the event of unilateral breach, the other spouse may immediately request division of the common property and delivery of the corresponding part, and, if there has been no infidelity or other serious fault on the part of that spouse, in the absence of sufficient means of subsistence, an assistance pension may be awarded to provide for his or her needs and those of any dependent children.

"In particular, if the marriage is breached with the intention of forming a union with a third party, the abandoned spouse may oppose the marriage and require that provision should first be made regarding the above-mentioned matters. However, in each case, the precise financial arrangements made by the perpetrator of the breach shall be submitted to the judge for approval."

CANADA

[Original: English]

[3 July 1990]

1. Property rights are fundamental to the Canadian legal system, subject only to limitations in the public interest. In this context, property rights, together with the other rights set out in the Universal Decalaration of Human Rights and the two International Covenants, are recognized in Canada as contributing to the dignity and the worth of the human person and the principles of freedom and justice affirmed by the International Bill of Rights.

2. The right to own and enjoy property is a basic element of the common law and statutory law in Canada. At common law, various presumptions operate in favour of property rights, including the presumption that compensation is to be provided where someone has been deprived of their property by statute and the statute does not expressly deal with this point. In addition, common law principles of fairness and natural justice apply where someone's property rights have been affected by law or other government action. Where Canadian statutes make provision for the expropriation of property in the public interest, such statutes provide for fair notice and compensation.

3. The right to enjoyment of property is also protected at the federal level by the Canadian Bill of Rights. It specifically provides, in respect of all federal laws, that individuals have the right to enjoyment of property and the right not to be deprived thereof except by due process of law.

COLOMBIA

[Original: Spanish]

[26 June 1990]

1. The Constitution of Colombia stipulates the right of ownership, placing certain limits on its exercise by assigning to it a social function, since "private interest must yield to the public or social interest". The Constitution enlarges extensively on this limitation in the following provisions:

Article 30: "Private ownership and other rights acquired under due title in accordance with civil law by individuals or bodies corporate are guaranteed and may not be disregarded or disturbed by subsequent civil laws. When the application of a law enacted for reasons of public benefit or social interest results in a conflict between the rights of individuals and the necessity recognized by that law, the private interest must yield to the public or social interest.

"Property is a social function which entails obligations. For reasons of public benefit or of social interest defined by the legislator, expropriation may take place by a court order and after indemnification. Nevertheless, the legislator, for reasons of equity, may specify cases where, by an affirmative vote of the absolute majority of the members of both houses, no indemnification is to be made."

Article 31: "No law establishing a monopoly shall apply until full indemnification has been made to the individuals who, by virtue of that law, are prevented from operating a lawful business.

"No monopoly shall be established except as a revenue measure and in accordance with law.

"The only privileges which may be granted shall be those which refer to useful inventions and to communication routes."

Article 32: "Freedom of enterprise and private initiative shall be guaranteed within the limits of the common good, but overall management of the economy shall be the responsibility of the State. The State shall be authorized by law to take action in the production, distribution, utilization and consumption of public and private goods and services, in order to rationalize and plan the economy and to achieve overall development.

"The State shall also be authorized by law to take action in order to ensure that the human and natural resources are utilized to the full, under an income and wages policy whereby social justice and the harmonious and comprehensive upgrading of the community, and of the working classes in particular, constitute the principal objective of economic development."

The right of ownership

2. Since 1886 the Constitution of Colombia has embodied laws which guarantee private ownership. Article 120, paragraph 18, authorizes the President to issue temporary patents to initiators of useful inventions or improvements; article 35 guarantees copyright; article 202 the ownership of mines; article 36 provides for donations inter vivos and by testament; article 30, paragraph 1, recognizes private ownership and other rights acquired under civil law; article 34 proscribes the penalty of confiscation; article 30, paragraph 3, allows expropriation for reasons of public benefit or social interest, but only after authorization by law, a court order which so decrees and indemnification.

3. In 1936, the reformers of the Constitution went beyond the statement that ownership "has" a social function by proclaiming, in article 30, paragraph 2, that ownership "is" a social function, and a "function which entails obligations".

4. This has formed the basis for important laws on agrarian reform; these include the new concept of possession through economic development; an extinctive prescription of ownership, whereby, should land cease to be worked economically for a period of three years, the private ownership thereof is extinguished and the land passes into the domain of the State; and the establishment of the Colombian Institute of Agrarian Reform, responsible for formulating and implementing land improvement plans, for monitoring the extinction of ownership and initiating procedures for legalizing such extinction, for the expropriation and sale of land and for the gratuitous award of vacant land.

The prohibition of monopolies

5. Article 31 of the Constitution of Colombia, the text of which is given above, is intended to protect economic freedom in view of the illicit manipulation of the supply of or demand for goods and services in which an individual could become involved. In other words, it prohibits the existence of private monopolies which transform their holders into controllers of production and sales, but it admits the temporary operation of the so-called "natural" monopolies, i.e., those which arise from inventions or improvements. The only monopolies authorized by the Constitution are those established by law to increase State revenues. Any business or industry deemed to be an official monopoly and therefore prohibited from operating is entitled to indemnification.

6. Finally, attention is drawn to articles 39 and 48 of the Constitution which establish, respectively, that the law may restrict the production and consumption of liquor and fermented beverages and that the Government alone is entitled to import, manufacture and possess arms and ammunition.

The freedom of enterprise

7. From the proclamation of the Republic until a few years ago, our Constitution drew inspiration from the liberal traditions of the Manchester School.

8. The Constitutional reform of 1936 gave authorization, for the first time, for State action in the operation of private industries or enterprises. On the one hand, article 39, paragraph 4, of the Constitution stated that the State could order transport or water companies and other public services to revise their tariffs and regulations. The purpose of this was to upgrade public services. This article remains in force and appears without amendment in the present Constitution.

9. On the other hand, article 32, introduced in the same year, made general provision for State action in the operation of all private industries and enterprises. The much broader purpose of this action was to "rationalize the production, distribution and consumption of wealth and to give the worker his due protection". But the action deriving from this article could only be taken through legislation adopted by a special majority.

10. The Supreme Court interpreted this provision to mean that action could be taken only when Congress had specified the measures involved. For that reason, the wording of the article was changed in 1945; henceforth it would be for the Government to act and determine all the details of the action, and legislation would first have to be enacted in Congress by an absolute majority.

11. In the constitutional reform on 1968, one of whose main aims was to settle planning problems, article 23 was recast to give a fuller definition of the purposes of State action "under an income and wages policy whereby social justice and the harmonious and comprehensive upgrading of the community, and of the working classes in particular, constitute the principal objective of economic development".

12. This broader view of the role of the State in economic life was confirmed by article 120, paragraph 14, of the Constitution, which authorized the Government to intervene, when necessary, in the bank of issue and in the activities of individuals and bodies corporate aimed at the management or utilization and investment of funds from private savings. This last-mentioned power of the executive is a particularly effective form of action, there being very few economic activities which have no link with private savings.

13. This is how Colombian law regulates the practice of economic intervention, which, despite strong resistance from businessmen, is extensively applied.

Intellectual property

14. As the term "property" does not apply exclusively to tangible things and can also cover the product of intellectual and creative activity, the Constitution of Colombia establishes in article 35, paragraph 1, that literary and artistic property shall be protected in the same manner as transferable property, for the duration of the author's life and 80 years thereafter, through the procedures prescribed by law.

15. In accordance with Act 23 of 1982, article 1, the authors of literary, scientific and artistic works enjoy protection for their works in Colombia. Legal protection is also enjoyed by the interpreters or performers of such works, by

producers of recordings and broadcasting organizations, in matters of their rights vis-à-vis those of the author.

16. Accordingly, the main aspects of the right to individual and collective property are set forth in the Constitution of Colombia.

EGYPT

[Original: Arabic]

[17 July 1990]

1. Because Egypt has been a member of the United Nations since its foundation and participates in and adheres to its covenants, its signing of the Universal Declaration of Human Rights of 1948 had the effect of making that Declaration and its provisions a part of its internal legislation. Since article 17 of the Declaration provides that everyone has the right to own property alone as well as in association with others, and that no one shall be arbitrarily deprived of his property, Egypt's adherence to that principle has been incorporated into its Constitution. The Constitution enshrines that right and treats it as a basic constitutional principle, and the legal system has established means of legislative protection such as to ensure that that right is maintained and not infringed.

I. Constitutional protection of the right to own property

2. The Egyptian Constitution includes provisions for the protection of this right. Article 34 states that "private property shall be safeguarded and may not be sequestered other than in cases specified by law and by means of a judicial decision. It may not be expropriated other than for the public good and against compensation in accordance with the law ...". Article 35 states that "nationalization of such property shall not be permitted other than for considerations of public interest, in accordance with the law and against compensation". Article 36 prohibits confiscation other than by a judicial decision.

3. The Egyptian Constitution recognizes the importance of the individual private ownership of property and its effective role in fulfilling the objectives of economic and social development, constituting as they do a pivotal element of the purposes and covenants of the United Nations. Article 32 states that "private property shall take the form of non-exploitive capital. The law shall govern the performance of its social function in the service of the national economy within the framework of the development plan ...". It is worth noting that this form of property plays its part - beside public and co-operative forms of property - in contributing to the optimum utilization of human and material resources and in fulfilling development objectives by promoting a balanced measure of economic and social justice. It is also noteworthy that the Egyptian legal system recognizes several forms of private property, including an individual's right to own his dwelling and the instruments by which he earns his living. This right is entirely separate from the right of any member of his family, including his spouse, to own

private property, as well as from the right of individuals to own production projects for diverse consumer and investment purposes.

4. Egypt's Supreme Constitutional Court plays its part in protecting these constitutional principles. When a law diverges from any one of these principles, the judgements of the Court ensure that the unconstitutional provision is rescinded. Judgements have been given by the Constitutional Court, inter alia, in respect of the following cases:

(a) In action No. 5 (judicial year 1), the Court found that article 2 of the decision in Law No. 150 of 1964 was unconstitutional in providing for the devolution to the State of the funds and property of individuals who have been taken into custody. According to its judgement, since the devolution to the State of the funds and property of natural persons who have been taken into custody is not equivalent to the expropriation of property for the public good or to nationalization, it constitutes an act of trespass against private property and of confiscation, thereby violating the provisions both of article 34 of the Constitution, which states that private property shall be safeguarded, and of article 36, which prohibits public confiscation and does not permit private confiscation other than by a judicial decision.

(b) In action No. 67 (judicial year 4), the Court found that article 4, paragraph 2, of the decision in Law No. 72 of 1962 concerning the nationalization of certain companies and enterprises was unconstitutional in ruling that property belonging to the spouses and children of the owners of nationalized companies and enterprises was to be attached as an indemnity against any obligations to which such companies and enterprises might be liable in excess of their assets. According to the judgement, Egyptian constitutional law has specifically emphasized the principle whereby private property should be safeguarded and protected from infringement other than as an exception, because such property is, essentially, the product of individual labour and a spur to dynamism and progress, besides being a source of national wealth which must be developed and preserved in order to perform its social function in the service of the national economy. The Court decided that the property of spouses and children should not be held as an indemnity against any obligations to which nationalized companies and enterprises were liable in excess of their assets, because they were in no way involved with such obligations and there was no reason why they should bear responsibility for them, and because the indemnity embraced all the property of wives and children, even if the source of such property had no connection whatsoever with the company or its owners.

(c) In action No. 8 (judicial year 5), the Court found that article 2 of the decision in law No. 13 of 1964 concerning trading in medicines under trade names was unconstitutional. According to its judgement, Egyptian constitutional law prohibits nationalization other than for considerations of public interest, in accordance with the law and against compensation. It also categorically prohibits the public confiscation of funds and does not permit private confiscation other than by a judicial decision. Since the aforementioned article of Law No. 13 of 1964 provides for the devolution without compensation to the (State-owned) Egyptian Public Medicines Company of the ownership of medicines and preparations produced in pharmacies under trade names, or for the purposes of trading, and registered with the Ministry of Health, it thereby contravenes the provisions of article 36 of the

Constitution, which prohibits the public confiscation of property and does not permit private confiscation other than by a judicial decision.

(d) In action No. 23 (judicial year 3), the Court found that article 10 of Law No. 9 of 1959 concerning importation was unconstitutional in ruling that the Minister of Economy or his representative was entitled to subject imported goods to administrative confiscation. According to its judgement, constitutional legislation had established rulings to govern confiscation. It prohibited private confiscation other than by a judicial decision, defined the instrument whereby such private confiscation was to be carried out and required that it should take place on the basis of a judicial rather than an administrative decision. The intention was thus to safeguard private property from any confiscation other than by a judicial decision, to ensure that the procedures and guarantees of litigation would enable the rightful owner to defend his rights and to remove any suspicion of unjust or forcible action against him.

(e) In action No. 12 (judicial year 5), the Court found article 5 of the decision in Law No. 156 of 1960, as amended, to be unconstitutional in establishing a maximum limit for compensation due to owners of newspapers whose ownership has been transferred to the State. According to its judgement, the Egyptian Constitution upholds the principle whereby private property and its inviolability must be safeguarded. It prohibits the forcible expropriation of such property from its owner other than for the public good and against compensation. Such compensation shall be assessed only in terms of its real value to the owners of those newspaper enterprises which have been transferred to the State, meaning that the compensation shall correspond and be equivalent to that value. The promulgation of a law setting a maximum limit to that value can therefore not be permitted, because such action would reduce the value of the compensation due and constitute an act of trespass against private property.

(f) The Court also found the laws prohibiting recourse to justice in specific cases to be unconstitutional, because, under constitutional legislation, no administrative action or decision may be rendered unamenable to judicial control. It is thus clear that the Court has not limited the applications of its authority to declaring laws which infringe the principle of the protection of private property to be unconstitutional but has also proceeded to establish and protect the constitutional principle prohibiting the enactment of legislation which renders any action unamenable to judicial control. In this context, the Court found article 2, paragraph 5, of the decision in Law No. 2 of 1963 concerning the expropriation of immovable property required for the implementation of irrigation projects to be unconstitutional because it did not permit any form of appeal against a decision to assess compensation for such expropriation.

II. Legislative and judicial protection of the right to own property

5. While the Constitution and judicial applications thereof affirm respect for the right to own property as set forth above, Egyptian laws, as inspired by the Constitution, provide for a harmonious regulation of that right, on a basis of respect and affirmation, details of which are provided below.

A. Protection of the right to own property in the provisions of the Civil Code

6. The provisions of the Civil Code (articles 802 et seqq.) establish and regulate the right to own property. Within the limits of the law, the owner of any thing is alone entitled to use, enjoy and dispose of it, meaning both the entire thing owned and those of its essential elements which cannot be separated therefrom without its being damaged or destroyed. An owner of land is also entitled to treat his ownership as including that which is above and below it and is entitled to its fruits, products and accessories.

7. While the concept of ownership originally applied only to material items of immovable and movable property, the right of ownership has, since the beginning of this century, been extended to new resources having an economic value. Property rights have come to include the ownership by individuals of the various different forms of literary and artistic rights, as well as the ownership of trade marks, data and patents, of financial and commercial instruments and of businesses, taken as a group of abstract components.

8. The legislation of the Civil Code is intended to protect private ownership against any infringement thereof. In article 805, the Code provides that "no one may be deprived of his property other than in the cases and in the manner provided for by the law and against fair compensation". Besides being intended to protect private property against administrative interference, as will be explained below, the legislation provides for protection against arbitrary action by individuals.

9. The means of recourse open to an owner whose property is subject to interference is to initiate an action in respect of his entitlement by making a claim against the party which has infringed his ownership of the thing owned. An action such as this, which is brought to protect the right of ownership, may be undertaken by any owner having a claim on an item of property which is held by another. It derives from his right of ownership and is intended to restore that item of his property to his possession. Such an action is based on the right of ownership, which is not subject to any limitation, and an action protecting that right is therefore of consequence. Although the acquisition of property is subject to limitation, the forfeiture of property is, conversely, not subject to such limitation.

10. The judgements given by the Egyptian Court of Cassation have successively consolidated both the former and latter concepts establishing the right of individuals to own property and safeguarding that right against infringement. The Court has ruled:

(a) That anyone who owns land becomes its owner and of all that is above and below it.

(b) That the owner of any thing is alone entitled to use, enjoy and dispose of it, within the limits of the law.

(c) That an action in respect of entitlement brought by an owner with a view to recovering his property from the party which has usurped it shall not be subject to any limitation. The right of ownership shall be a permanent right, which does not lapse as a result of lack of use. A claim made by the owner for the value of immovable property which has been usurped shall be regarded as a claim obliging the usurper to fulfil his commitment to make amends by means of compensation if he is unable to restore the property in kind. Restoration in kind is the essential premise and shall be replaced by cash compensation only if restoration in kind is impossible. Accordingly, an action to claim the value of immovable property which has been usurped shall not be subject to limitation.

B. Protection of the right to own property in the Law concerning expropriation

11. The greatest threat to individual ownership of property is its forcible seizure by the Administration, drawing upon those means of execution which individuals are unable to contest. Accordingly, the first means which the law establishes to protect private property against arbitrary action by the Administration is that of restricting the State's authority to infringe upon the private property of individuals. The Law declares such restriction to be legitimate in article 508 of the Civil Code, as follows:

(a) Removal of property from its owner shall be based on a provision in law; the law does not permit such removal other than in promotion of the public interest;

(b) In cases of expropriation of property for the public good, the Administration shall follow the procedure laid down by the law, i.e., after observing the procedures laid down by the Law concerning expropriation of property for the public good;

(c) Fair compensation shall be paid to the owner in respect of the forfeiture of his property. The Law concerning expropriation lays down the measures which ensure the assessment of fair compensation for the owner if his assessment of such compensation differs from that of the Administration.

12. In Law No. 577 of 1954 concerning the expropriation of immovable property for the public good or for purposes of improvement, the law has erected a series of guarantees to protect the right to own property, requiring essentially that expropriation of immovable property take place only in the event of necessity related to the public good. Service of the public good is the corner-stone upon which any decision to expropriate property must be based; without it, such a decision has no legal validity. It also requires that there must be compensation for such expropriation; without it, the expropriation is legally invalid. It stipulates that the compensation paid to owners whose property is expropriated must be fair and equivalent to their loss, in accordance with specific rules dictating that such compensation must be paid to them with all due promptness.

13. Articles 6 et seq. of the Law concerning expropriation of property for the public good lay down specific procedures for the expropriation of property, stating

that those concerned may object to such expropriation and to the related assessment of compensation. Article 13 stipulates that the committee appointed to rule on such an objection should include a member of the judiciary as its chairman in order to ensure neutrality. The article also endows these procedures with legal protection by authorizing owners to refer the decisions of this Committee to the tribunal of first instance dealing with appeals, besides invalidating any immunity against judicial control which might be extended to the decisions of the committee. In articles 16 et seq., the Law prohibits the temporary seizure of property belonging to individuals other than for the public good and against fair compensation, including compensation for the non-utilization of such property from the time of its temporary seizure until the actual payment of due compensation. In article 18, it establishes a maximum limit of three years for such temporary seizure and states that property must be returned in the same condition as at the time of its seizure, subject to the owner being compensated for any damage or reduction in its value. The decision of the President of the Republic contained in Law No. 252 of 1960 authorizes the President alone to decide on cases of temporary seizure and the public good, prohibiting other branches of the Administration from taking such a decision, in accordance with the serious nature of such action and the need to avoid any error on the part of the administrative authorities.

14. The Egyptian Court of Cassation has affirmed these principles in several judgements. On different occasions, it has ruled as follows:

(a) That an owner whose property is seized and appropriated for the public good without observance of the legal procedures for expropriation shall be entitled to claim compensation from the Government;

(b) That the judge hearing the case shall be free to fix compensation and award it in the form either of a single consolidated sum or of the expropriated property itself, together with compensatory interest;

(c) That the court hearing the case may assess the compensation due to the owner against the proceeds yielded by the land forcibly seized and appropriated from him by the Government for the public good;

(d) That de facto seizure of land by the Government and its incorporation into a main road shall of itself be sufficient grounds to make a claim for compensation, even if an expropriation decree has not been issued;

(e) That the compulsory seizure by the Government of immovable property from its owner without observance of the procedures required under the Law concerning the expropriation of property for the public good shall constitute unlawful seizure. Ownership of such immovable property shall therefore not be transferred to the Government, and the owner of the immovable property shall, despite its seizure, continue to be the rightful owner. The Court also ruled that measures carried out in that context are considered invalid and that the owner of the immovable property is entitled to make a direct claim for compensation;

(f) That the committee appointed to rule on objections raised by those concerned to decisions for the expropriation or seizure of property for the public

good shall be authorized to fix compensation in respect of expropriation decisions. Appeals against its decisions shall be heard by the competent tribunal of first instance, whose decision in such a case shall be final.

C. Separation of the financial liability of spouses with respect to the right to own property

15. Article 13/1 of the Civil Code provides that the statutes of Egyptian law, one of whose sources is the Islamic Shariah, shall apply to the state of marriage and its consequences, including its financial consequences.

16. The statutes establish that the financial liability of spouses shall be separate, contrary to comparable practices in other States which treat the financial liability of spouses as a single liability, while authorizing one member of the couple to choose alternative financial treatment, whether this be the dowry system or the amalgamation of their liabilities. As a result of the establishment by the Islamic Shariah of the principle of separation between the financial liabilities of spouses, the right of either one of them to own property, to make use of such property, to administer it and to decide as to its disposal is treated separately.

17. The technical principles of Islamic law establish the responsibility of women from the religious and secular point of view, and women and men are, in that respect, equal. It is implicit in women's responsibility, which is independent of that of men, that they should have the reward of what they have earned, including the right of ownership, without sharing it with their husbands. According to the Shariah, a woman of full legal age has free disposal of all her property with respect to donation and commutation, and her husband has no entitlement to it and has no right of restraint over her in her disposition of all or part of such property. God has said, "Then, if you perceive in them right judgement, deliver to them their property" (Koran 4.10). This indicates that women are completely free to dispose of their property without prior permission and that it is not possible for husbands to establish rights over the property of their wives.

18. The principles of the Islamic Shariah accord protection to the wife's right of ownership of her bridal trousseau and, although it goes to the conjugal dwelling, her right of ownership in it is safeguarded and it is held in trust by the husband and may not be encroached upon. These principles have been applied in the judgements of the Court of Cassation, which has found:

(a) That the provision of the Islamic Shariah, and thus of the Egyptian legal system, take no cognizance of the concept of communauté de biens known to French law, under which the property of both spouses is subject to a régime of joint or shared ownership;

(b) That the financial arrangement between husband and wife, in accordance with the provisions of Egyptian law, is governed by the principles of personal status law. These principles constitute the general law that must be applied in questions relating to personal status, according to the preponderant view in the madhhab of the Imam Abu Hanifa;

(c) That the wife's trousseau is held in trust by the husband and that, as with everything that falls into this category, an unwarranted refusal to hand it over gives rise to an infraction;

(d) By virtue of a judgement of the Court of Cassation on the application of the Lease Law, which stipulates that it is prohibited for one person to hold more than one dwelling needlessly, the Court found that this prohibition is limited to a single, specified individual and does not extend to others even if such others are members of his family.

D. Legal regulation of joint commercial ownership

19. The Civil Code and the Commercial Code contain provisions dealing with the regulation of partnerships of all kinds. Reference is here made to them as forms of joint ownership that have evolved in the course of economic development in the world as a whole. A partnership is a contract under which two or more persons undertake to participate in a financial undertaking by providing a part of the capital or labour in order subsequently to divide the profit or loss to which the undertaking may give rise, and the provisions of the law protect such joint ownership and establish rules to ensure its protection and regulation, whether the partnership in question is one of persons or of property.

20. The formation of a partnership entails its endowment with a financial liability independent of that of the individual partners. The partnership, rather than its members, assumes the financial obligations arising out of its operations. That is to say that rights and obligations are directly attributable to the liability of the partnership and not to that of each of the partners. Ownership of the shares provided by the partners is transferred to the partnership itself, which has free disposal of them, and no creditor of the partnership may take measures of execution against the private property of partners other than general partners. A partner may have free disposal of the share owned by him, and its counter value may be assigned to his heir. The Commercial Code provides a number of formal and substantive guarantees in order to ensure the proper management, protection and supervision of joint property. In its judgements, the Court of Cassation has found itself obliged to establish principles ensuring the protection of the private property of partners and its separation from the joint property of the partnership used for the purposes of the enterprise, and it has found:

(a) That a partnership has a corporate identity independent of the persons of the co-owners, and that its liability must therefore be separated from theirs and its property must be independent of theirs;

(b) That it is one of the effects of the formation of a partnership that it acquires a financial liability independent of the liabilities of the co-owners so that their private property is unaffected.

III. Criminal protection of the right to own property

21. The progressive regulation and protection of the right to own property requires that it should be accorded criminal protection. Accordingly, the Criminal Code regards certain acts considered by the legislature as being prejudicial to the right of individuals to own property as criminal offences. The Code of Criminal Procedure also contains a number of guarantees to safeguard and protect the constituent elements of this right.

A. The Penal Code

22. Articles 311 et seq. of the Criminal Code regard as a criminal offence the misappropriation of private movable property of value than can be owned and possessed. The legislature has laid down stiff penalties for acts of misappropriation committed against the owner when in his home or its outbuildings with a view to protecting the scope of the right to own property, and it has established the penalty of imprisonment at labour for this offence.

23. By Law No. 29 of 1982, the legislature enacted a new provision into article 321 (bis) of the Penal Code penalizing anyone who trespasses on the ownership of a lost article or animal by not returning it to its owner within three days of finding it and by considering it to be his own, thus encroaching on its owner's right to it. The offender is penalized by imprisonment at labour for a period of two years for this offence. The legislature has also imposed on whoever takes unrightful possession, without the intention of acquiring ownership, of a vehicle belonging to someone else the penalty of one year's imprisonment (art. 322 (bis) (i)). It has also regarded as a criminal act the seizure of documents of financial, literary or intrinsic value and has imposed on trespass on their ownership the penalty of temporary hard labour (art. 325).

24. The legislature has provided for the protection of private property against trespass by means of fraud and the betrayal of trust and has classified such acts as misappropriation of property. It has imposed the penalty of imprisonment for the fraudulent possession of movable property with the intention of stealing it, and has penalized the misappropriation and dissipation of movable property entrusted to the offender in one manner or another by its owner or possessor (arts. 336 et seq.).

25. In directly criminalizing encroachment on the private property of individuals, the legislature has penalized the destruction and damaging of agricultural implements and livestock enclosures (art. 354), encroachment on animals owned by others (art. 355), damage to any area peripheral to the property of others that is under crops (art. 358) and the removal of property lines and boundary markers. It has imposed penalties for damage to movable and immovable property owned by others in such a way as to render it unservicable (art. 361) and has penalized the destruction of goods, effects or crops owned by others (art. 366).

26. In the context of protecting real property, the legislature has laid down penalties for entry onto land that is not in the tenure of the offender with the

intention of preventing occupancy by force (art. 369) and has declared to be a criminal offence and imposed a penalty of imprisonment on entry into inhabited places and their outbuildings with the intention of preventing their occupancy (art. 370).

27. The legislature has imposed a penalty on tresspass on agricultural land and open space owned by persons other than the offender if carried out for the purpose of cultivation, erecting installations thereon, occupancy or enjoyment in any manner whatever (art. 372 (bis)).

28. The legislature has considered as a criminal offence the entry of an offender onto agricultural land or open space owned by another and his refusal to leave on orders from the rightful owner (art. 373).

29. The jurisprudence of the Court of Cassation has constantly supported the protection of private property and has imposed penalties on those who infringe upon it. The Court has judged:

(a) That the enactments regarding misappropriation as a criminal act that apply to movable property belonging to others also apply to the misappropriation of anything that has a financial value and that can be owned, possessed and moved;

(b) That destruction of the property of others shall include destruction of any significant portion of the crops or trees and need not affect a large amount and that plowing the earth shall give rise to the offence of destruction of crops;

(c) That the penalty for encroachment on the periphery of the property of others shall extend to encroachment on any structures on the property lines whether made of wood, earth or any other material;

(d) That the penalty for the destruction of the property of others shall apply if such destruction affects property that is not owned by the accused;

(e) That, in penalizing entry to land in the possession of another, the legislature had it in mind to protect the holder of such land from the encroachment of others on this property;

(f) That the penalty for the offence of preventing occupancy by others shall have effect upon proof that there was material interference with others in their de facto occupancy of the land with the intention of preventing such occupancy by force.

B. The Code of Criminal Procedure

30. The Code of Criminal Procedure has surrounded the right of persons to own property with a number of guarantees, whether relating to the entry of agents of public authority into places owned by individuals and their inspection, search and sealing, or to the return of objects, their sequestration and the impermissibility of their removal as long as their presence is not the result of an offence, and it has established a number of procedures to protect the possession by owners of their property:

(a) Article 45 of the Code of Criminal Procedure prohibits the entry of agents of public authority into any place owned and occupied by individuals other than in the circumstances set forth in the law, and this is permitted only in the event that assistance is requested from inside or in the event of fire or flood;

(b) Articles 46 et seq. of the Code of Criminal Procedure restrict cases in which it is permissible for agents of public order to inspect premises owned by individuals or to search in any place of safe-keeping for evidence of crime to those carried out under a judicial warrant;

(c) Article 54 of the Code of Criminal Procedure allows the occupant of land under seal or sequestration to appeal against the procedure to a magistrate;

(d) Article 52 of the Code of Criminal Procedure prohibits security officials from breaking open locked safes and from examining the papers kept in them by their owners if they should come across them in the course of a search;

(e) Articles 101 et seq. permit the return of items owned by others and previously seized, as long as they are not necessary for the prosecution of a case or are subject to confiscation, even without a request to that effect. If their owner fails to request their return and they are likely to perish with the passage of time, they may be sold and their value paid to the owner;

(f) Article 208 (bis) (b) of the Code of Criminal Procedure permits any person against whom a decision has been issued by the Public Prosecutor preventing him from free disposal and management of his property (in implementation of art. 208) to appeal against that decision to the Court;

(g) Articles 373 (bis) et seq. of the Penal Code surrounds the right to own property with reserve guarantees by stipulating that the Office of the Public Prosecutor may take precautionary measures to protect the property of an owner against which an infringement has taken place and may bring the matter before the competent magistrate for the issuance of his decision within a maximum period of three days. It also requires the Office of the Public Prosecutor, in such an event, to bring a criminal action against the act of infringement within 60 days. Just as this may be undertaken by the Office of the Public Prosecutor, the plaintiff may also bring the case in civil law.

KENYA

[Original: English]

[12 July 1990]

1. The right to own property is a constitutional right and Kenya recognizes this as one of the basic human rights provisions. It is further protected under the Convention on the Elimination of All Forms of Discrimination against Women, to which Kenya is a party.

2. Kenya's legislation with regard to all forms of property preclude any impairment of enjoyment of human rights and fundamental freedoms, without prejudice to their right freely to choose and develop their political, social, economic and cultural systems.

3. The Government of Kenya therefore supports the principles as stipulated under the two resolutions.

PAKISTAN

[Original: English]

[6 July 1990]

Pakistan states that the fundamental right of every citizen to own property or dispose of property in any part of Pakistan is guaranteed under articles 23 and 24 of the Constitution of Pakistan.

PANAMA

[Original: Spanish]

[4 May 1990]

1. In its strict legal sense, the right to own property is the full power to dispose at will of material goods except as legally restricted.

2. The term property is sometimes used in the sense of ownership and means not the thing but the legal power over the thing.

3. At the domestic level, the Political Constitution of the Republic of Panama enshrines in its articles 44, 45, 46 and 47 the principles contained in article 17 of the Universal Declaration of Human Rights, which protects the right of everyone to own property alone as well as in association with others and the right not to be arbitrarily deprived of one's property, as follows:

> "Article 44: The right of natural or juridical persons to own property acquired in accordance with the law is guaranteed.
>
> "Article 45: The right to own private property entails obligations on the part of its owner by reason of the social function it must fulfil.
>
> "For reasons of public utility or social interest as defined by law, property may be expropriated pursuant to special judgement and with compensation.
>
> "Article 46: When the application of a law enacted for reasons of public utility or social interest results in a conflict between private rights and the need stated in the law in question, the private interest must yield to the public or social interest.

"Article 47: In the event of war, serious disturbance of public order or urgent social interest, when prompt action is required, the executive branch may decree the expropriation or occupation of private property.

"Where restitution of the object occupied is feasible, the occupation shall be only for the duration of the circumstances that gave rise to it.

"The State shall in every case be responsible for any expropriation so carried out by the executive branch and for the losses and damage caused by the occupation, and shall pay the amount thereof once the reason for the expropriation or occupation has ceased to exist."

4. None the less, at the legal level, it must be emphasized that the principles enshrined in the Universal Declaration concerning the right of every person to own property alone and in association with others and the right not to be arbitrarily deprived of one's property are, in the case of the first principle, recognized by the Civil Code and, in the case of the second, by the Judicial Code, which states as follows:

"Article 337: The right to own property is the right to enjoy and dispose of a thing without restrictions other than those established by law.

"The owner shall be entitled to take legal action against the possessor of the thing in order to reclaim it.

"Article 338: No one shall be deprived of his property except by the competent authorities and for serious reasons of public utility, subject always to prior payment of appropriate compensation."

5. Expanding on article 45 of the Political Constitution and article 338 of the Civil Code, article 1937 of the Judicial Code establishes the procedure to be followed in cases of expropriation for reasons of public utility or social interest.

PORTUGAL

[Original: French]

[2 August 1990]

1. The right to own private property and to transfer it during life or by reason of death is a fundamental right enshrined in the Portuguese Constitution, in its chapter on economic, social and cultural rights.

2. In conformity with article 17, paragraph 1, of the Universal Declaration of Human Rights and article 1 of Protocol No. 1 to the European Convention on Human Rights, which Portugal has ratified, article 62, paragraph 1, of the Portuguese Constitution states that "Everyone shall have the right to own private property and to transfer it during life or by reason of death in conformity with the Constitution".

3. In providing for the right to own private property, the Constitution enshrines the right of private persons to acquire goods or patrimonial rights. These persons, natural or legal, have the right to own goods as property and, in general, the right to become, through acts inter vivos or mortis causa, the holders of any right having pecuniary value, such as credit rights, royalties, social rights, etc. Patrimonial rights are not therefore exclusively reserved for the State or the community but may also be held by private persons.

4. Nevertheless, some kinds of goods may be removed from the sphere of private property - as is the case for the means of production, land and natural resources where this is justified by the public interest (art. 80, subpara. c, of the Constitution) - and rules may exist which limit freedom of hereditary transfer (art. 2024 et seq of the Civil Code) or provide for preferential rights (see art. 1117 of the Civil Code).

5. The right to own private property is thus subject to limitations established by law, which are referred to in several articles of the Constitution (e.g., art. 89).

6. Paragraph 2 of article 62 of the Constitution also includes a general clause providing for requisition or expropriation for reasons of public utility, thus providing for other possible limitations on the right to own private property.

7. Nevertheless, in conformity with article 17, paragraph 2, of the Universal Declaration of Human Rights and article 1 of Protocol No. 1 to the European Convention on Human Rights, article 62, paragraph 2, of the Constitution provides that requisition or expropriation for reasons of public utility may be carried out only in accordance with the law and subject to the payment of fair compensation.

8. This principle is also applicable to all similar acts affecting the right to own property or patrimonial rights.

9. Fair compensation is thus intended to make good the loss that the individual has suffered by reason of the requisition or expropriation, and must be determined in conformity with the provisions of Decrees-Law Nos. 845/76 and 635/74 (dealing with expropriation and requisition respectively).

10. In addition to the broad generic definition given in article 62, the Constitution provides for divided forms of property ownership in several of its articles and for different purposes. That is the case for royalties (art. 42, para. 2), ownership of urban land (art. 65, para. 4), ownership of the means of production (arts. 82 and 89) and agricultural property (arts. 97 and 98).

11. The Constitution also gives the State the following responsibilities in connection with the right to housing and the right to own agricultural property:

(a) To encourage the establishment of housing co-operatives and to promote private individual construction (art. 65. 2 (b) and (c));

(b) To promote, in conformity with the law and without prejudice to the right to own property, greater balance among agricultural holdings, for the purpose of ensuring the rational management of land and other natural resources (arts. 97 and 98).

12. The right to own private property thus takes on aspects of an economic, social and cultural right. Its establishment is intended to ensure that the largest possible number of people are in fact given the possibility of owning property or exercising other patrimonial rights.

13. From this point of view, the right to own property overlaps with the right to housing (art. 65) and the right to private, co-operative and self-managed economic initiative (art. 61), and has its place within the broader context of the realization of economic, social and cultural democracy.

SAUDI ARABIA

[Original: English]

[5 March 1990]

1. The right of owning property is enjoyed by all Saudi Arabian citizens, privately or in association with other Saudi Arabian citizens. In fact, the Saudi Government distributes public land and interest-free loans for unlimited duration for the construction of private homes and the development of agricultural and industrial enterprises by every Saudi Arabian citizen.

2. The private ownership of property by non-Saudi citizens is not practised under Saudi Arabian legislation as in many other countries.

SUDAN

[Original: English]

[11 September 1990]

1. The right of everyone to own property alone as well as in association with others and the right not to be arbitrarily deprived of one's property, has been provided for in all the Constitutions of Sudan, both transitional and permanent, since independence in 1956. These rights have also been provided for in Sudan's various legislations (e.g. The Civil Transactions Act 1984).

2. Referring to the first Sudanese Constitution (The Sudan Transitional Constitution adopted in 1956) these rights were provided for in article (6) of the said Constitution which read as follows:

> "6. No person may be arrested, detained, imprisoned or deprived of the use or ownership of his property except by due process of Law."

3. The same article was re-enacted in The Sudan Transitional Constitution (Amendment 1964), which was abolished by the Permanent Constitution of The Democratic Republic of The Sudan of 1973. The social role played by private ownership in the field of production has been recognized, and the right of ownership has been provided for in article 33 of this Constitution which reads as follows:

> "Art. 33 The right of private ownership shall be guaranteed for the citizens, unless it is against the public interest, and its inheritance and donation in accordance with the Law are guaranteed. The State recognizes the useful social role played by private ownership in the field of production and in appreciation of its responsibility."

4. Article 34 of this Constitution protected private property from confiscation, as it provided that:

> "No private property shall be confiscated except in the public interest, in accordance with the Law, and on payment of fair compensation."

5. The Permanent Constitition was replaced by The Sudan Transitional Constitution of 1985, which provided for the right of ownership in article 25 as follows:

> "Art. 25 The right of ownership shall be guaranteed to citizens and associations as organized by law and shall not be acquired or appropriated save in the public interest and in consideration of fair compensation."

6. This Constitution was abolished by the first Constitutional Decree of 1989. Nevertheless this same Constitution of Decree recognized and provided for the Continuity of all existing laws until repealed or amended.

7. The right of private ownership is well protected by Sudanese laws. The Civil Transactions Act of 1984 provided for ownership, its kind, restrictions and methods of acquisition. Section 516 of this Act, which provided definition and scope of ownership states:

> "1- Ownership is the absolute power of the owner to dispose of his property, its use and enjoyment.
>
> "2- The owner of immovable property has the exclusive rights to its crops, fruits and other natural products and may dispose of it in all the legally permissible ways.
>
> "3- The owner of property owns all its essential components which cannot be secured without being destroyed or its nature changed.
>
> "4- He who owns land owns the airspace above it and the subjacent soil below it to the useful extent unless there is agreement to the contrary."

8. Section 517 of the same Act which provides for the protection of ownership states:

"1- 517 (1) No person shall be deprived of his property without a lawful cause.

"2- No person shall be deprived of his property except in the public interest and for just consideration and in accordance with the provisions of law."

9. The restrictions on ownership are provided for in section 516 of the same Act which reads:

"The owner has the right to deal with his property in the manner he thinks best, provided he does not cause grave injury to others or act in a way contrary to the laws relating to health, public policy, private interests or easements."

10. The right of ownership of property in association is protected by sections 532 and 533 of The Civil Transactions Act which states:

"S.532: Subject to the rules which govern succession, if two persons or more acquire the ownership of a thing by any of the modes of acquisition, without the partition of their respective shares, they are deemed co-owners in undivided and equal shares unless there is evidence to the contrary.

"Any co-owner may dispose of his share in common property in the manner he thinks fit, provided that he does not prejudice the rights of other co-owners."

11. The acquisition of land privately owned, by the public authorities, and the compensation to be paid is governed by the Land Acquisition Act, 1930. Land is defined in section (3) of this Act as follows:

"'Land' includes benefits to arise out of the land and buildings and things permanently fixed to the land, also an undivided share in the land and also any interest in land which requires or is capable of registration."

12. The Act defines the word "person" in the same section as including a body corporate.

13. Section 4 of this Act reads:

"4 (1). Where it appears to the President of the Republic that land in any locality is likely to be acquired permanently or temporarily for any public purpose a notification to this effect shall be published in the Gazette, and the people's Executive Council, and for its servants or workmen, to do all or any of the following things:

"(a) To enter upon and survey and take levels of any land in such locality;

"(b) To dig or bore into the subsoil;

"(c) To do all other acts necessary to ascertain whether the land is adopted for such purpose;

"(e) To make such levels, boundaries and lines by placing marks and cutting trenches;

"(f) Where otherwise the survey cannot be completed, the levels taken or the boundaries or lines of the work warded, to cut down and clear away any crop, fence, trees or undergrowth;

"Provided that no person shall under this section enter into any building or any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

"(2) The Government shall pay compensation for the damage (if any) caused by any acts carried out under the provisions of subsection (1) and the people's Executive Council shall at the time of entry on the land pay or tender payment of such amount (if any) as it thinks sufficient to cover the damage likely to be caused as aforesaid."

14. Instead of payment of money as compensation for the damage caused by acquisition, the person interested in land may be granted other land, by the provision of section 22, subsection (1) of this Act which reads:

"Where land is being acquired under this Act the people's Executive Council may elect to compensate the persons interested in the land, apart from any buildings, by granting them other land instead of by a payment of money."

TURKEY

[Original: English]

[25 June 1990]

1. The Turkish legal system recognizes and ensures respect for the right to own property individually or in association with others. The right to own property is recognized as a fundamental human right and protected as such by the Turkish Constitution of 1982.

2. The Turkish Constitution, in its article 35, entitled "right to property", states that everyone has the right to own and inherit property. According to the Constitution, the right to own and inherit property may be limited by law only in the public interest. In line with the traditional approach adopted since the eighteenth century, the Constitution recognizes the close interrelation between the right to property and the right to inherit and guarantees both legal institutions as fundamental rights, placing them under constitutional protection.

3. The constitutional protection of the right to private property is an indication of the economic system opted for. Private property is seen as a prerequisite for the individual and social development. It is recognized that private property has a direct bearing on the full enjoyment of human rights as well as on the material and spiritual development of the individual. Article 16, paragraph 1, of the Constitution, stating that "everyone has the right to ... protect and develop his material and spiritual entity", has a particular relevance in this context.

4. Article 35 of the Constitution, while guaranteeing the right to own property as a fundamental individual right, stipulates on the one hand that this right may be limited by law only in view of the public interest and on the other hand, that this right shall not be exercised in contravention of the public interest. Chapter III of the Constitution dealing with economic and social rights contains provisions providing guarantees in case of derogations made in view of the public interest to the full exercise of the right to own property, such as the nationalization or expropriation of privately owned real estate or the imposition of administrative servitudes thereon.

5. The property as protected in the Turkish legal system covers, in addition to all movable properties and real estate, patrimony as a whole, entitlements, right in rem, etc. The constitutional protection of the right to property including the means of production is extended to the prevention of the formation of monopolies and cartels. This particular protection set forth in article 167 of the Constitution is designed to prevent any kind of exploitation and to ensure equal rights to property for all.

6. The protection of the property against violations by individuals is ensured by the provisions of the Civil Code and Act No. 3091 on the prevention of violation of real estate possession. The legal framework for the exercise of the right to property individually or in association with others is defined in Book IV of the Turkish Civil Code, entitled "Rights In Rem".

7. In line with the above, the Turkish Government believes that the right to own property is a fundamental right which contributes to the development of individual liberty and initiatives, and serves as a basis for the exercise of many other human rights.

UNITED STATES OF AMERICA

[Original: English]

[20 June 1990]

1. In the United States, a tradition of respect for basic human rights and fundamental freedoms has moulded both Government and society. A corner-stone of this tradition, which antedates the formation of our country, is respect for the right of the individual to own property alone as well as in association with others.

2. Democracy itself rests upon the premise of the moral integrity of the individual and the belief that society should be regulated by individual choice and decision-making. Respect for this moral principle permits individuals to exercise authority over their economic activities (which most people spend a majority of their time performing), and particularly the practical means and the material output of those activities. Without such authority, individual integrity is greatly impaired by a loss of control over actual work. The individual becomes alienated from society and susceptible to the control of authoritarian and totalitarian forms of Government.

3. Recognition and protection of the fundamental right to own property gives the individual the means and social standing to exercise personal independence. This was crucial for the development of a democratic form of Government in the United States.

4. In the same way, the right to own property was also essential to the development of legal, economic, social and cultural institutions in which free and independent persons can participate without discrimination, and in which the protection of other fundamental rights and freedoms is respected. No one can deny that property rights form the corner-stone of free-market economies, but their significance in society far transcends the economic realm. The right to own property is essential in stimulating individual initiative necessary for the economic, social and political growth of society as a whole.

5. The right to own and enjoy property is thus an essential and integral part of the protection of human rights and fundamental freedoms which is afforded by the Constitution and laws of the United States. The United States Constitution secures the individual's fundamental freedom from arbitrary search and seizure. Further, it enforces the individual's fundamental right to due process and just compensation before private property can be taken for a public purpose.

6. In a free and democratic society characterized by appropriate limitations on the powers of Government, protecting the integrity of the individual necessarily includes protecting the individual's use and enjoyment of private property. Civil liberties such as the freedom of speech, worship and assembly flourish in a society that respects property rights, as in the United States. These civil liberties will be more fully exercised by individuals who know that potentially malevolent actions of Government cannot cause the arbitrary seizure of material assets or the means of their livelihood.

7. Much of Government's role in a democratic society arises from the need to regulate competing claims to property among individuals or groups. But in implementing such evenhanded measures and administrative policies, Government should promote the creation of assets and the acquisition of property by individuals over whom it exerts authority.

8. This creation of assets and acquisition of property is an important element in the "pursuit of happiness". When Government becomes an obstacle to that pursuit, it becomes destructive of the end for which it was established. Such an outcome will inspire certain individuals, or the people as a whole, to seek to exercise their fundamental right to change their Government.

9. In some countries, Governments may react by imposing general restrictions on human rights as part of desperate efforts to preserve political power. In other cases, as illustrated over the past year in Eastern Europe, Central Europe and Central America, individuals succeed in replacing repressive Governments with more democratic ones pledged to respect the right to own property.

10. The right to own property alone as well as in association with others, if fully protected, benefits the international community as well. Individuals will choose to trade and invest abroad when they have confidence that the Government of another country will not expropriate their assets without just compensation, will generally permit them to repatriate their earnings, and will respect their ability to make private economic decisions. In relation to civil, political, legal, economic, social and cultural aspects of overall growth and development, the future of the world's developing countries depends on full respect for private property rights throughout the world, in every Member State and across all international boundaries.

YUGOSLAVIA

[Original: English]

[25 September 1990]

1. The 1988 amendments to the Constitution of the Socialist Federal Republic of Yugoslavia introduced radical changes in the political system and socio-economic relations. The purpose of the changes is to reflect the needs of future development of the Yugoslav society and to overcome the contradictions and problems which emerged in the constitutional system and in various forms of the social set-up and relations.

2. The emphasis has been placed on the socio-economic system resulting in a broad conceptual transformation of socio-economic relations. This has been done through the orientation towards a market economy based on a free play of market forces. This means that the organizational forms of economic activity, attracting private financial resources of citizens and foreign capital; the introduction of new forms of ownership, the system of allocation, use and management of the socially owned means of production are now systemically in the function of the market and market-based economy.

3. In the field of proprietary-legal relations (Amendment XXIII substituted art. 78, para. 2, and art. 80, paras. 1 and 2, of the Constitution of the Socialist Federal Republic of Yugoslavia) the constitutional amendments provide for qualitatively and quantitatively new solutions concerning the right of citizens to own buildings, apartments, means of production, business premises and agricultural land. These solutions constitute an entirely new attitude of society towards the size of property owned by citizens. Citizens are guaranteed the right of ownership over the means of production, business buildings and premises, apartments and houses, without any quantitative restrictions. This practially means that the extent of the right to own property in this field is unlimited, i.e., that citizens

have the right to own any number of houses, apartments, business buildings and premises and means of production. At the same time, under the conditions and in the manner stipulated by law, the means owned by citizens may be leased or rented out to other persons for the purpose of earning income thus recognizing the economic and market-oriented character of this property.

4. According to Amendment XV to the Constitution of Yugoslavia, foreign (physical or legal) persons have now the possibility to establish their own companies in Yugoslavia, to act, together with Yugoslav nationals, as co-founders of joint ventures, contractual companies, banks and other financial organizations, and to be investors in companies, banks or other financial organizations, co-operatives or other forms of co-operation and joint business activities.

5. Further amending of the Constitution of Yugoslavia is under way so that an equal treatment and protection of all forms of ownership (social, State, co-operative, private) could be guaranteed also in the country's main legislative document. (On 24 April 1990, the Commission of the Assembly of the Socialist Federal Republic of Yugoslavia for constitutional questions prepared Draft Amendments to the Constitution of Yugoslavia.) The right to own property is particularly emphasized as a right contributing to the realization of economic and social development. In addition to labour, ownership will be the basis for participation in management, self-management and decision-making.

6. In view of the above solutions, it is clear that the constitutional changes, those already made and those under way, speaking in very general terms, tend to rehabilitate private ownership, i.e., the private sector in the structure of production relations.

7. As far as legislation is concerned, proprietary relations have been regulated, at the federal level, by the Law on the basic proprietary-legal relations, which came into force in September 1980. The 1988 amendments to the Constitution of the Socialist Federal Republic of Yugoslavia made necessary radical changes in some solutions contained in the above-mentioned law, so that proprietary legal relations could be regulated in a more comprehensive and conceptually different manner. The Constitutional and reform principle concerning the plurality of ownership forms (social, co-operative, private, individual) requires legislative regulation through the establishment of an equal material-legal régime for all forms of ownership, by ensuring the legal security of the owner and the inviolability of his proprietary rights with a view to creating material interest and stimulation for production-oriented and other forms of engagement of his own property; by introducing an appropriate, more liberal proprietary-legal régime for foreign physical or legal persons participating as owners or founders of companies, investors and licence-holders, etc., in the economic system of Yugoslavia; by eliminating institutional (administrative, etc.) and other restrictions in the sphere of proprietary-legal relations; by abolishing the established maximum of privately-owned immovable property and by making possible free enterprise.

8. Considering that some of the above-mentioned, and some other no less important, questions in the sphere of proprietary-legal relations require a very complex legislation which cannot be incorporated only in the Law on basic

proprietary-legal relations, an extensive legislative activity is now under way to draft a federal law on property (and other rights) under which the principals of an equal status for all types of property, legal protection in the acquisition, disposal and sale of property as well as the abolition of all institutional prohibitive rules, preferring one type of property over the others, will be much more recognized. The Principles contained in articles 7, 17 and 27 of the Universal Declaration of Human Rights and in other documents of the United Nations binding upon the States Parties will thus find their full meaning and justification in the Yugoslav proprietary-legal system.

III. INFORMATION RECEIVED FROM UNITED NATIONS BODIES

OFFICE OF THE UNDER-SECRETARY-GENERAL FOR INTERNATIONAL ECONOMIC AND SOCIAL AFFAIRS

[Original: English]

[23 April 1990]

1. The right to own property alone as well as in association with others contributes to the development of individual liberty and initiative and serves to foster, strengthen and enhance the exercise of other human rights and fundamental freedoms. The degree to which the right to own property contributes to the achievement of other objectives depends very strongly on the extent to which the right is enjoyed in practice by individuals. One limit to such ownership is when Governments as instruments of society own all property or all property useful in earning a livelihood. Such monopoly in the ownership of property leads demonstrably to the reduction of individual liberty. An engine driver on a railroad is at the mercy of the railroad owner for a livelihood, if there were only one owner or if all railroads were owned by Government or if all railroad owners, being few, could act in unison. A similar fate befalls a machine tool operator in an automobile factory, if all such factories were owned by one person or organization. Since earning a livelihood is so central to one's being, all other liberties can be in jeopardy when means of livelihood are so controlled.

2. However, in practice, individuals' right to own property is exercised by only a few in society. Wealth is notoriously unequally distributed and, to that degree, the livelihood of many in society can be withheld by the few. It is true that the drive to make profits urges owners of wealth to put that wealth into productive use providing the many with incomes and livelihoods. However, in periods of tension and conflict between property owners and those dependent on that property for making a living, non-property owners can be at a distinct disadvantage.

3. To make good that disadvantage, several things need to be done. Opportunities must be opened for all to acquire incomes and wealth, so that there is continual change in the ownership of property. Governments must act to prevent collusion among property owners and for this purpose impose anti-trusts and anti-monopolies legislation. Those without property must be given every opportunity to organize themselves to exercise countervailing power to withstand periodic onslaughts by

owners of property. The right to own property individually or in association unbridled by such countervailing forces will no more ensure the exercise of individual liberty than a government monopoly of property.

COMMITTEE ON THE EXERCISE OF THE INALIENABLE RIGHTS OF THE PALESTINIAN PEOPLE

[Original: English]

[10 April 1990]

The Committee on the Exercise of the Inalienable Rights of the Palestinian People, which was established by the General Assembly to make recommendations on the modalities for implementing the inalienable national rights of the Palestinian people, does not have a contribution to make to the general conceptual questions regarding the right to own property to be addressed in the proposed study. The Committee, however, has repeatedly expressed its grave concern at the violation by Israel of the human rights of Palestinians in the occupied territory, including violations of their property rights. These have included confiscation of land, restrictions on the use of water resources, demolition of buildings, uprooting of trees and destruction of crops, forced closures of shops, seizures of movable property, and various restrictions on trade and financial exchanges. Details on these various practices are contained in the reports of the Committee to the General Assembly and the publications of the Division for Palestinian Rights, and can be provided if required. The reports of the Special Committee on Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories also contain detailed relevant information.

UNITED NATIONS CENTRE FOR HUMAN SETTLEMENTS (HABITAT)

[Original: English]

[21 June 1990]

1. The activities of UNCHS (Habitat) in relation to the right to own property are shaped by the Global Strategy for Shelter to the Year 2000. The General Assembly in its resolution 43/181 of 20 December 1988 on the Global Strategy for Shelter to the Year 2000 decided that "the main objective of the Strategy is to facilitate adequate shelter for all by the year 2000". The same resolution, as one of the principles which form the basis of the strategy, recommends adoption of "enabling policies, whereby the full potential and resources of all governmental and non-governmental actors in the field of human settlements are utilized". Within the context of the Global Strategy for Shelter, the ownership of land by individuals and families is one of the means of securing land tenure. The ownership of shelter is also seen as a means of increasing productivity in the housing sector mostly by providing incentives for individuals to buy or develop shelter on their own.

2. The right to personal property, including the residence of one's self and family has also been implicitly recognized by the Commission on Human Rights resolution 1987/22 of 10 March 1987 on the realization of the right to adequate housing adopted on the occasion of the International Year of Shelter for the Homeless.

3. The technical co-operation projects of UNCHS in many developing countries contains elements relating to enabling policies to promote ownership of land and shelter by individuals and families.

ECONOMIC AND SOCIAL COMMISSION FOR WESTERN ASIA

[Original: English]

[26 July 1990]

1. The social development programme at ESCWA deals with the development of various disadvantaged groups. The "Conference on capabilities and needs of disabled persons in the ESCWA region", which took place in Amman from 20 to 28 November 1989, recognized that the prolonged armed conflicts such as the Iraqi-Iranian war, the Lebanese conflict, the repeated Arab-Israeli wars and the Israeli practices towards the intifadah in the occupied territories added to the gravity of the disability problem in the ESCWA region. The studies contained in the background papers were carried out under specific political and social conditions in the region and include statistics regarding age distribution of the victims of armed conflicts and the available rehabilitation programmes for various categories of disabled children in the countries in question.

2. ESCWA also contributed to a seminar on prospects for the Palestinian industrial sector, which took place at UNIDO in Vienna from 11 to 13 October 1989, by presenting a paper on "The occupied Palestinian territories: industrial development policies, contraints and prospects".

3. In addition, the Commission is preparing, on the instructions of the Secretary-General, a report entitled "Israeli land and water policies and practices in the occupied Palestinian and other Arab territories".

IV. INFORMATION RECEIVED FROM SPECIALIZED AGENCIES

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

[Original: English]

[25 May 1990]

1. The right to own property is a fundamental element of all democracies and an intrinsic part of human rights. The right affects the social and economic development of Member States as a whole and, therefore, it also affects the

welfare, quality of life, health and nutrition of populations. In view of its importance, this question has been treated recurrently in philosophical, political and economic treatises, tracts and pamphlets since the beginning of civilization to the present day. In fact, the perception which has worked as the driving force of political and economic reforms in the until now centrally planned economies has been reflected in these two resolutions and particularly in paragraph 5 of resolution 43/123.

2. The right to own property alone as well as in association with others to enhance the exercise of human rights and fundamental freedom and the respect for the rights of others in meeting the just requirements of the general welfare in a democratic society has been recognized by the World Conference on Agrarian Reform and Rural Development (WCARRD), held in Rome in 1979. The WCARRD demanded that where systems of ownership and use of land and access to water and other natural productive resources "are judged to be constraints on rural development, achievement of social equity, and wide access to land and other natural resources for the vast majority of rural masses, Governments should consider institutional, legal and policy changes within the context of their national and rural development goals ..." (WCARRD Declaration of Principles, p. 9).

3. If the right to private property is considered as among the incentives to produce food and as a determinant of access to food by means of asset ownership, its relationship to food security - which is central to the mandate of FAO - would be apparent. In fact, FAO's World Food Security Compact carries exhortations to Governments and individuals which would imply the need for government policies which grant to farmers the right to own property as an incentive to grow more food (see III.3, p. 3). The provisions on action by individuals (V.4, p. 8) go further and make the farmer responsible not only for food production but also for the conservation of the soil and other natural resources for future generations. These are obligations which go even beyond the right to own private property.

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

[Original: French/English]

[11 September 1990]

1. In 1989, within the framework of the programmes of the "United Nations Task Force on Implementation of Nairobi Forward-looking Strategies toward the Year 2000 for Rural Women", United Nations Educational, Scientific and Cultural Organization carried out research on rural women's land ownership in Africa. The study compared legislations and practices of different periods in African history. Field research in Cameroon, for example, revealed that women were excluded from land ownership even after the introduction of a Western-type civil code, due to the coexistence of traditional land tenure and modern institutions.

2. UNESCO carried out research on the causes of the exclusion of women from land ownership in Cameroon. This case study makes it possible to arrive at a better understanding of the mechanisms of exclusion and the grounds for them.

3. This study appeared to be necessary, since virtually all the land farmed is owned by men. The participation of women in the production of agricultural resources ranges from 40 per cent to 80 per cent throughout the world, varying by region and by degree of mechanization. Why are the main workers of the land excluded from land ownership? Our research focused on the links between social structures, in terms of sex, tasks and the land rights of women in various cultures in general, and in the Bamileke and Beti population groups in Cameroon in particular. Our theories on the exclusion of women from land ownership are based on the study of different types of tenure resulting from the combination of different variables, including: acquisition and defence of territory, social structures and status of individuals, matrimonial mobility of women, population density, collective or individual access to land, production and management of resources by sex, and inheritance of property.

4. Since the restraints of child-bearing forced them to become the first human beings to adopt a sedentary way of life, women were evidently mainly concerned with food-gathering as a means of survival. Much later, climatic changes and dwindling resources apparently ended the nomadic life of men as hunters, after rivalry between them had caused the land to be distributed among different communities. To conquer and defend fertile land, to carry off women and then protect them against rivals, were roles which made men dominant in the emerging social structures. Exogamy excluded girls and instituted a male line of inheritance.

5. In order to justify the male monopoly on land ownership, various pretexts are resorted to, inculcated and spread throughout the community. An appeal is made to logic, to moral, to philosophical and religious systems, and to beliefs, customs, rules and laws. For example, several myths about the origin of the world associate women with or liken them to the earth, as producers or reproducers, under the control of the man.

6. Research into traditional African forms of land tenure has established that land, sometimes considered to be divine, was a sacred community possession, one that was inalienable and managed by the elders of the tribes. Men, women and children, in accordance with certain rules, enjoyed the usufruct, or access to all the resources of this source of life which lends itself, but does not submit, to mankind. Among the Bamileke, a highly hierarchical society on the high plateaus in western Cameroon, the chief, the notables and the married men managed the plots of land according to the needs of the families, while a single heir was responsible for taking care of the descendants. The particular status of the Mah-foh (queen mother) gave her certain prerogatives, including land-owning rights similar to those of the notables. For the Beti clans, which for a long time were semi-nomadic in the vast forest in the south, the land did not become a valued asset until the colonial era, but was shared only among male heirs.

7. The colonial administration introduced radical changes: the land was no longer sacred; it became the object of commercial transactions, and was divided up and registered as individual private property. Western ideas of land ownership, the notions of usus and abusus were transferred to societies that were still at the stage of community usufruct. The colonial settlers misinterpreted what was said to them by local spokesmen, and mistook for owners those who were merely

administrators of the land. Thus, under the Napoleonic civil code women lost their tacit rights as joint usufructuaries of the land and became dependents of the head of the family. When it took over the existing social and traditional structures, the administration superimposed its own modern and uniform system of land-ownership on a varied set of local agrarian customs.

8. With independence, the new States retained the imported land-ownership legislation while also making use of pseudo-traditional types of tenure which dropped the idea of community usufruct (which was fair to women) and made men the sole owners.

9. In Cameroon, traditional and modern types of land tenure exist side by side, despite their paradoxical and sometimes contradictory nature. Under the Act of 7 July 1966, "Any member of a community may have his right to ownership recognized in the case of areas of land actually occupied, in accordance with custom, by himself or his legal heirs or assigns". But does this return to custom really enable "positive law" to take precedence over custom in the application of this provision? Nowadays, rules of custom applied in the lower courts do not grant women any right to land ownership: women have no place in the lineage of their fathers and husbands. The higher courts apply modern law and guarantee equal rights without distinction as to sex; but women still need to be aware of this and to have good lawyers. Women's undeniable contribution to development is not given its due, but it would be encouraged by land ownership-rights which appeared fairer to women. Certain international organizations are, in fact, recommending such a solution. But there is still a long way to go, when one considers that French law still has difficulty in overcoming the rule of primogeniture in the south-west and the egalitarianism which in the north, often excludes daughters.

10. Land rights are conditioned by social structures which are hierarchical to varying degrees, and always discriminatory with regard to sex. Various reasons are given to justify this situation: beliefs and customs of traditional societies, the colonialists' egalitarianism and duty to civilize their colonies, and modernization and development needs of the inheritors and liberators, namely the newly-independent States themselves. There is a proposal to the effect that land, a vital resource, should be considered the common heritage of all humanity, and should therefore be managed equally by both men and women. In practice, the law does not resolve the problem of the exclusion of women. What strategies, what structures and what means could we devise to enable women to participate in the management of the land?

UNITED NATIONS

A

General Assembly

Distr.
GENERAL

A/45/524
16 October 1990
ENGLISH
ORIGINAL: ENGLISH/FRENCH/
RUSSIAN/SPANISH

Forty-fifth session
Agenda item 95

NEW INTERNATIONAL HUMANITARIAN ORDER

Report of the Secretary-General

CONTENTS

		Page
I.	INTRODUCTION	3
II.	REPLIES RECEIVED FROM GOVERNMENTS	4
	Byelorussian Soviet Socialist Republic	4
	Czechoslovakia	6
	Germany, Federal Republic of	7
	Holy See	8
	Mongolia	8
	Panama	10
	Union of Soviet Socialist Republics	11
III.	REPLIES RECEIVED FROM UNITED NATIONS BODIES AND SPECIALIZED AGENCIES	12
	A. United Nations	12
	Department for Special Political Questions, Regional Co-operation, Decolonization and Trusteeship	12
	Office of the United Nations High Commissioner for Refugees	15

CONTENTS (continued)

		Page
	Office of the United Nations Disaster Relief Co-ordinator	17
B.	Specialized agencies	17
	Food and Agriculture Organization of the United Nations	17
	International Labour Organisation	18
	United Nations Educational, Scientific and Cultural Organization	18
IV.	REPLIES RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS IN CONSULTATIVE STATUS WITH THE ECONOMIC AND SOCIAL COUNCIL	19
	International Federation of Resistance Movements	19
	International Institute of Humanitarian Law	20
	International League for the Rights and the Liberation of Peoples	22
	Inter-Parliamentary Union	24
	World Muslim Congress	28

I. INTRODUCTION

1. The General Assembly at its forty-third session adopted two resolutions on 8 December 1988 dealing with humanitarian matters: resolution 43/129 entitled "New international humanitarian order" and resolution 43/130 entitled "Promotion of international co-operation in the humanitarian field".

2. In resolution 43/129, the General Assembly encouraged Governments as well as governmental and non-governmental organizations that had not yet done so to provide their comments and expertise to the Secretary-General regarding the humanitarian order and the report of the Independent Commission on International Humanitarian Issues. It also invited the Independent Bureau for Humanitarian Issues to continue and further strengthen its essential role in following up its work.

3. Further, in that resolution, the Assembly requested the Secretary-General to remain in contact with Governments as well as governmental and non-governmental organizations and the Independent Bureau for Humanitarian Issues and to report to the General Assembly at its forty-fifth session on the progress made by them.

4. In resolution 43/130, the General Assembly encouraged the international community to contribute substantially and regularly to international humanitarian activities, called upon Governments, the United Nations system and intergovernmental and non-governmental organizations further to develop international co-operation in the humanitarian field and invited all non-governmental organizations concerned with the humanitarian issues examined by the Independent Commission and working with strictly humanitarian motives to bear in mind the recommendations and suggestions made in the report of the Independent Commission in the context of their policies and actions in the field.

5. In that resolution, the General Assembly also requested the Secretary-General to continue his contacts with Governments, agencies and programmes of the United Nations system and non-governmental organizations concerned, as well as with the Independent Bureau for Humanitarian Issues and, taking into account information received, to submit to the General Assembly, at its forty-fifth session a report on possible ways and means of strengthening international co-operation in the humanitarian field.

6. The present report is submitted pursuant to General Assembly resolutions 43/129 and 43/130.

7. In preparation of the present report, the Secretary-General, on 13 February 1989, sent notes verbales to Governments to inquire whether they wished to contribute views or information to the report. Appropriate inquiries were also sent, on the same date, to United Nations organs and specialized agencies, non-governmental organizations in consultative status and to the Independent Bureau for Humanitarian Issues. On 22 March 1990, the Secretary-General reiterated his requests to them.

8. As at 1 September 1990, substantive comments on the topic were received from the Byelorussian Soviet Socialist Republic, Czechoslovakia, the Federal Republic of Germany, the Holy See, Mongolia, Panama and the Union of Soviet Socialist Republics. The Department of Special Political Questions, Regional Co-operation, Trusteeship and Decolonization of the Secretariat, the Office of the United Nations High Commissioner for Refugees, the Office of the United Nations Disaster Relief Co-ordinator, the Food and Agriculture Organization of the United Nations, the International Labour Organisation and the United Nations Educational, Scientific and Cultural Organization also sent relevant communications. Information was also received from the following non-governmental organizations: International Federation of Resistance Movements, International Institute of Humanitarian Law, International League for the Rights and the Liberation of Peoples, Inter-Parliamentary Union and World Muslim Congress.

II. REPLIES RECEIVED FROM GOVERNMENTS

Byelorussian Soviet Socialist Republic

[Original: Russian]

[20 July 1989]

1. The Byelorussian SSR considers that the establishment of a new international humanitarian order is an essential prerequisite for creating an international climate that would help strengthen peace and comprehensive security.

2. Through the joint efforts of States and acting in accordance with the new political thinking, it has been possible to avert the threat of war. The consideration of diverse interests, the primacy of values common to all mankind, the pre-eminence of political means for solving international problems, the transition from confrontation to dialogue and other essential aspects of the new political thinking have led to appreciable and irreversible positive changes.

3. The Byelorussian SSR believes that, in order to establish a new international humanitarian order, it is first of all necessary to understand that, in view of the interdependant nature of the contemporary world, humanitarian problems are closely linked to problems in the political, military, economic and ecological fields. Co-operation in the humanitarian field must be based on mutual respect on the part of States and their good-neighborliness. In order to solve long-term humanitarian problems, effective measures must be taken to ensure general peace, security and true freedom.

4. In order to create a qualitatively new moral and psychological climate in international relations, the United Nations must step up its efforts to strengthen the principles and norms, in respect of which the most diverse political, philosophical and religious beliefs considering man, human life and the worth of the individual as the highest value are in agreement. The establishment of a new international humanitarian order must be based on international co-operation in the field of human rights.

5. International humanitarian problems cannot be solved without the joint efforts and sincere commitment of the entire international community. The Byelorussian SSR shares the view that human solidarity is one of the means of tackling global humanitarian problems. There must be greater international co-operation in solving such urgent problems as hunger, disease, poverty, drug addiction, illiteracy and improving the difficult situation of certain population groups and victims of accidents, natural disasters, local conflicts and environmental degradation.

6. Universal accession to the international legal documents in the field of human rights would be an important step. In order to achieve this, the States that have not yet done so should, as speedily as possible, become parties to the covenants and other documents and should bring their domestic legislation into line with international norms and standards. This would be a real contribution to both the immediate protection of human rights and the strengthening of international co-operation in the field. Concerted action by national bodies and international and national non-governmental organizations is also an essential element of such co-operation.

7. The humanitarian sphere of relations is very delicate and readily influenced by the state of relations between States. It is a sphere in which not only such basic principles of international law as respect for sovereignty, sovereign equality and non-interference in the internal affairs of States, but also the traditions and customs of peoples and the fate of peoples and individuals come into contact with one another and become interwoven. Successful humanitarian co-operation, therefore, is incompatible with the spirit of confrontation, the launching of slander campaigns and other manifestations of enmity.

8. A joint search for the best solutions to the urgent problems confronting mankind is the practical expression of international co-operation in the humanitarian field. Work on defining the concept itself of international co-operation in this field must be continued. That concept as well as the norms and principles governing such co-operation must be defined more carefully and made more precise.

9. The Byelorussian SSR has always participated actively in broadening international co-operation in the humanitarian field. Its representatives took part in drawing up the Universal Declaration of Human Rights, the international covenants on human rights, and other important documents on these questions. The Byelorussian SSR is a party to all basic international human rights agreements concluded under the auspices of the United Nations and conscientiously fulfils the obligations that it has undertaken in this regard.

Czechoslovakia

[Original: English]

[17 July 1990]

1. The Czech and Slovak Federal Republic expressed its support to General Assembly resolutions 43/129 and 43/130 entitled "New international humanitarian order" and "Promotion of international co-operation in the humanitarian field". It regards those resolutions of the international community adopted by consensus as the expression of a justified search for new methods and forms of co-operation in the humanitarian sphere corresponding to the call of the time. It understands these efforts also as part of the building of a new international order which would be in harmony with the principles of respect, law and ethics, one, that should become the basis for the development of truly democratic, humanistic international relations worthy of the coming twenty-first century. Czechoslovakia will support each and every initiative aimed at the advancement of humanitarian protection and of human rights, including the development of the relevant international mechanisms.

2. As a prerequisite of effective humanitarian co-operation Czechoslovakia regards first and foremost an all-round protection and exercise of human rights and civil freedoms. This requires that all countries consequently abide in their domestic policies and foreign relations by the provisions of the Charter, the Universal Declaration of Human Rights, the international covenants on human rights and the appropriate conventions on genocide, apartheid, racism and racial discrimination, torture, discrimination against women, the rights of the child, the rights of migrant workers and their families, and of other relevant international documents. Such co-operation can be substantially facilitated by an active and constructive approach to the crucial challenges of the present interdependent world where humanitarian questions are mutually linked with global problems in the political, military, economic, social and environmental spheres. A primary attention must be paid in this context to such problems as the use and threat of force, poverty, illness, natural catastrophes, major transport and technological accidents, homelessness, re-unification of families, illiteracy and others. Concrete steps by individual countries in this field will strengthen confidence needed for joint action by the United Nations Member States. Against this background, Czechoslovakia appreciates the conclusions, proposals and suggestions of the Independent Commission on International Humanitarian Issues contained in its report submitted to the General Assembly two years ago.

3. The United Nations has an indispensable role to play in the harmonization of these efforts. It is up to this Organization to work out as soon as possible, through the engagement of its specialized agencies working in the humanitarian sphere, the concept, functional framework, criteria, rules of procedure, co-ordinating mechanism and flexible practical applications of humanitarian assistance acceptable to all United Nations Member States. The drafting by a mandated commission of experts of humanitarian principles which would be discussed in the respective committees of the General Assembly, including the Sixth Committee wherever legal principles are concerned, should be the first step on the path of building a new humanitarian order.

4. Czechoslovakia suggests for consideration the setting up of a commission of specialists in international (humanitarian) law to address all questions connected with the international humanitarian order. Account should be taken also of the opinions of such organs and institutions as the International Committee of the Red Cross, the Red Crescent, the Office of the United Nations High Commissioner for Refugees, etc. States should be given the opportunity again to submit their views in the form of a special questionnaire drawn up by such a commission.

5. It would be useful to establish in future a permanent technical and material United Nations reserve fund for immediate humanitarian assistance in cases of emergency in various parts of the world. This approach also presupposes the strengthening of the role of the relevant United Nations bodies, especially of the Centre for Human Rights of the United Nations Office at Geneva and of the Centre for Social Development and Humanitarian Affairs of the United Nations Office at Vienna, as well as that of the important and well-proved instruments of providing assistance and services in this sphere.

6. For its part, Czechoslovakia is ready to participate in the preparation of a concept of providing humanitarian assistance through United Nations channels. For the purpose of a practical implementation of such a concept in future it will consider, according to the specific needs and requirements, material assistance as well as the possibility to delegate a team of Czechoslovak specialists in the field of health care and, possibly, also in other fields.

Germany, Federal Republic of

[Original: English]

[27 June 990]

1. The Government of the Federal Republic of Germany continues to attach great importance to international co-operation in the humanitarian field and refers in this context to its note of 9 August 1988 (see A/43/734, sect. II).

2. The Government of the Federal Republic of Germany considers that developments in the past few years have shown that the exchange of experience and international co-operation in the humanitarian field have not yet reached the desirable and necessary level. This affects spheres such as "early warning", "disaster preparedness", "pre-disaster planning", "emergency assistance", "disaster relief" and "rehabilitation". Improvements could be achieved by expanding the mandate of the Office of the United Nations Disaster Relief Co-ordinator. In this context, the International Decade for Natural Disaster Reduction can provide a framework for progress. The organs of the Decade and the numerous humanitarian-oriented organizations within and outside the United Nations system should create, together with governmental and non-governmental organizations, a flexible world-wide information and communication network aimed at reducing vulnerability in emergencies and increase the efficiency of international aid.

3. The Government of the Federal Republic of Germany is convinced that humanitarian problems can be effectively countered only if all parties concerned are prepared to co-operate efficiently and if the cost and burdens of aid are assumed by a larger group of donors than heretofore.

Holy See

[Original: French]

[11 July 1989]

In response to the information requested for the drafting of the report to be presented on this twofold and significant question, the Permanent Mission of the Holy See, on behalf of the Secretariat of State of His Holiness, has the honour to inform you that the official position of the Church concerning social affairs and human rights is fully set forth in the encyclical Sollicitudo Rei Socialis (issues 39 to 43, pp. 77-86) of His Holiness, Pope John Paul II.

Mongolia

[Original: Russian]

[September 1989]

1. The development and strengthening of international co-operation in the humanitarian field is a determining factor in strengthening mutual trust among States and bringing about truly proper and civilized norms of international intercourse and co-operation, which in turn will promote the establishment of a new international humanitarian order.

2. In order to bring about in international relations a new constructive approach to the question of humanitarian co-operation it is necessary to eliminate confrontation and interference in internal affairs from that sphere and reject the stereotypes of the past with regard to other countries and peoples. One must be guided by the values common to all mankind, search for new, creative criteria and forms of co-operation between States, find areas where interests and positions coincide, and exchange positive experience in solving urgent current problems.

3. The creation of just, truly humane conditions for ensuring the pre-eminent human right to life in peace and freedom must be the fundamental goal of international co-operation in this field. The efforts of States must focus on the paramount goal of the survival of mankind. For this, it is first and foremost necessary to step up joint efforts to disseminate the ideas of peace and security and inculcate in peoples a spirit of peace and respect for the way of life, values and traditions of others.

4. Mongolia believes that international co-operation in the humanitarian field, including efforts to encourage and increase a respect for human rights, can be raised to a qualitatively higher level, if all States observe the spirit and letter of the Charter of the United Nations and strictly fulfil the obligations that they have assumed under the corresponding international legal documents. This first of all entails the accession by all States to the basic international human rights documents, particularly the international covenants on human rights, as well as the conventions against genocide, apartheid, racism and racial discrimination, discrimination against women and others. In other words, they must become truly universal in nature.

5. The further codification of the "third generation of human rights", such as the right to peace, the right to development, the right to a better and safe environment and so forth, would be an important step in this direction.

6. Co-operation in the humanitarian field must be oriented towards carrying out the most pressing tasks in the field of human rights. They include, in our view, the elimination of all forms of mass violations of human rights, particularly, the eradication of the policy and practice of racism, apartheid, zionism, and also excluding the use of force from international relations.

7. Co-operation in implementing economic, social, cultural, and civil and political rights is also important. Here, States must co-operate in order to ensure that every individual is able to implement effectively and really his basic rights - the right to work, education, health care and social security, to make use of the achievements of culture and to the development of democracy and social justice.

8. The strengthening of international co-operation in the humanitarian field should be given careful consideration in the corresponding social and humanitarian bodies of the United Nations. It is necessary, in particular, to improve the work and enhance the effectiveness of the system of international bodies and specialized agencies in the field, and, especially, to expand the role of UNESCO in that work. Developing and further defining the concept of international co-operation in the humanitarian field, once its principles and priorities have been established, is an important task.

9. Further joint efforts within the framework of the United Nations are necessary in order to improve the situation of various vulnerable population groups - women, the elderly, the disabled, young people and children - and also to find new, effective ways and means to carry out international programmes and plans in this regard, including the sharing of experience and information.

10. The practical content and ultimate objective of international co-operation in the humanitarian field must also include the joint search for optimum solutions to the urgent problems facing mankind, including those of a legal, social and ecological nature, such as hunger, disease, extreme poverty, environmental degradation, natural disasters, unemployment, homelessness, illiteracy and others.

Panama

[Original: Spanish]

[4 July 1990]

1. The Government of the Republic of Panama welcomes all measures to protect human rights and to improve the human rights situation in general.

2. Therefore, in view of the growing number of conflicts, which are daily becoming more deadly and more persistent in view of the inhuman treatment engendered by ideological, religious or racial extremism, and in view of the loss of respect for the law, only a mobilization of Governments and peoples can restore an acceptable level of human behaviour in armed conflicts, even if solutions cannot be found. We hope that most of the conflicts can be resolved through the peaceful means of dialogue and negotiation, which appears to be the trend in today's world and represents the ideal to be achieved.

3. Furthermore, the Government of the Republic of Panama believes that the new international humanitarian order should be based on efforts to achieve a lasting peace. Such a peace should involve not only the absence of war but also co-operation between all peoples. It should be based on freedom, independence, national sovereignty, equality and respect for human rights. While there have been some significant gains in what we term international humanitarian law, in our opinion, a satisfactory level of implementation has not yet been achieved, owing to discrepancies in the application of that law.

4. Consequently, an extensive review of international humanitarian norms and laws should be undertaken. This would reveal the gaps which need to be filled, the duplications which should be eliminated and the institutions which must be restructured in order to achieve a genuine new international order in the field of human rights.

5. Thus, the Government of the Republic of Panama is committed, together with its people and the international community, to defending the humanitarian principles which underlie human rights and fundamental freedoms (enshrined in our Constitution) and is striving to improve living conditions in general, as a means of achieving international humanitarian co-operation.

6. Nevertheless, in the search for concrete ways to develop international humanitarian law, special attention should be paid to the promotion, exercise and widespread acceptance of the right to peace, which is a fundamental individual and collective right of persons and nations. To achieve such a goal, the countries of the world must accept all the existing instruments and of all those which might be proposed; these instruments must also be generally applied as a preliminary step towards the establishment of a new international humanitarian order.

7. We believe that the main objective of international humanitarian co-operation should be to create decent conditions of material and spiritual life for all peoples and for each individual human being.

Union of Soviet Socialist Republics

[Original: Russian]

[12 July 1990]

1. The Soviet Union is deeply convinced of the need to give further impetus to international co-operation in the humanitarian field. The many very urgent humanitarian problems facing mankind require adequate solutions. Although the contribution by the United Nations to the search for ways to bring about such solutions has been considerable, it could, in our view, be further expanded. This idea has been confirmed by the adoption at the forty-fourth session of the General Assembly of the resolution on enhancing peace, security and international co-operation in all its aspects in accordance with the Charter of the United Nations (General Assembly resolution 44/21).

2. As the positive global trend towards the humanization and democratization of relations between States gathers momentum today, man, with his various needs and concerns and the individual dignity that is inherent in him alone, must, we are convinced, increasingly become the focal point of the combined efforts of the world organization.

3. The ideas set forth in all three resolutions adopted at the forty-third session of the General Assembly on the question of a new international humanitarian order (resolutions 43/129, 43/130 and 43/131), in our view, really promote progress towards achieving this goal. Each of them is original and reflect the views and approaches of specific and extensive regions of the world and groups of States. At the same time, the ideas expressed in all three resolutions are closely linked and compliment one another. The Soviet Union is grateful to the sponsors of its draft resolution, who helped bring about its adoption without a vote, and will be prepared to continue constructive co-operation with all parties who so desire in order to elaborate further the valuable content of this resolution. We are also prepared to continue the exchange of views and co-operation with regard to the two other resolutions (General Assembly resolutions 43/129 and 43/131).

4. If the idea of a new international humanitarian order seems important to us because of the obvious acute nature of the urgent humanitarian problems in the world, the proposal by France concerning international co-operation in providing humanitarian assistance to victims of natural disasters and similar emergency situations is attractive to us because of its practical orientation. The ideas set forth in this proposal were given concrete expression in the tragic circumstances for our country, caused by the destructive earthquake in Armenia.

5. In the view of the Soviet Union, it would be useful in this area for Member States to continue within the United Nations the productive exchange of views supporting and developing the initiative of France. In this connection, it might perhaps be worthwhile to consider also the elaboration in future of some generally acceptable criteria for providing international humanitarian assistance in natural disasters with account taken of the wealth of experience of UNDRO, UNHCR, all other United Nations specialized agencies concerned, and also the major international non-governmental organizations active in the humanitarian field.

III. REPLIES RECEIVED FROM UNITED NATIONS BODIES AND SPECIALIZED AGENCIES

A. United Nations

DEPARTMENT FOR SPECIAL POLITICAL QUESTIONS, REGIONAL CO-OPERATION, DECOLONIZATION AND TRUSTEESHIP

[Original: English]

[3 August 1989]

1. The Department of Special Political Questions, Regional Co-operation, Decolonization and Trusteeship is involved in humanitarian assistance through its Unit on Special Emergency Programmes, which facilitates the initial response of the Secretary-General to all requests on an ad hoc basis for assistance in complex emergencies in African countries.

2. During the period under review, the Unit's activities have centred primarily on the complex emergencies in Mozambique, the Sudan and Somalia.

Mozambique

3. The Government of Mozambique, in order to cope with the devastating effect of the country-wide emergency brought about by the war of destabilization being waged by RENAMO with the assistance of South Africa, undertook to seek increased international assistance under the aegis of the United Nations. In 1987 and 1988, the Secretary-General convened donors conferences in Geneva and Maputo respectively. In 1987, pledges amounting to $209 million were announced against requirements estimated at $255 million and contributions were subsequently made to cover all estimated needs through the end of 1987. Similarly, at the 1988 Maputo Conference, pledges totalling $270 million were announced toward the $300 million 1988 emergency assistance and rehabilitation programme.

4. In April 1989, on the basis of the report of an inter-agency mission led by the Director of Special Emergency Programmes, the Secretary-General launced a third appeal for emergency and rehabilitation aid for 4.5 million affected and displaced people at a cost of $380 million for 1989-1990. While the appeal focused principally on food needs, it also called for assistance in logistics, road maintenance, agriculture, health, drinking water, primary education and shelter. However, since that meeting, only $252 million has been pledged and only $119 million was allocated by the donors to specific activities. The resulting slowdown could have a grave impact on the emergency programme and on the welfare of the most vulnerable among displaced and affected Mozambicans.

Sudan

5. In June 1988, the Prime Minister of the Sudan requested the Secretary-General to appeal for emergency assistance to help the Sudan cope with the humanitarian problems resulting from years of drought and famine compounded by an ongoing war in

the south. The Secretary-General was also requested to help the Sudan undertake a comprehensive review of the situation and update existing data on the number, condition and background of the affected population.

6. In August 1988, the Secretary-General sent to the Sudan a high-level mission led by the Under-Secretary-General of the Department. The mission reviewed the situation with high-level government officials and representatives of the donor, United Nations and non-governmental organizations communities and set up detailed criteria for an assessment team. Beginning in late September, a follow-up inter-agency mission composed of representatives from UNDP, UNDRO, UNICEF, FAO, WHO and WFP and headed by the Director for Special Emergency Programmes, spent over three weeks in the Sudan holding further discusions with all parties concerned and visiting the principal locations in the north and central parts of the country where large numbers of the displaced were congregated.

7. Following a request from the Permanent Representative of the Sudan to the United Nations for inclusion in the agenda of the forty-third session of the General Assembly of an item entitled "Emergency assistance to the Sudan" (A/43/244), the Assembly, on 18 October 1988, adopted resolution 43/8 in which it called upon all States to contribute generously to the needs of relief operations, rehabilitation and reconstruction in the Sudan and requested the Secretary-General, in close co-operation with the Government of the Sudan, to co-ordinate the efforts of the United Nations system to mobilize resources for that purpose.

8. In pursuance of that resolution, on 27 October, the Secretary-General appealed to donors (A/43/755) to provide immediate financial and material support amounting to $73 million for urgent humanitarian assistance to the affected populations of the Sudan, including support for food, transport of relief items and assistance for health, water, and other non-food requirements. The Secretary-General also stated that, having examined the report of the needs assessment mission, he considered that the situation in the Sudan constituted a complex emergency and had decided, among other steps, to appoint a Special Co-ordinator for Emergency Relief Operations and to reactivate the United Nations Emergency Operations Group. The Secretary-General subsequently nominated the UNDP Representative and United Nations Resident Co-ordinator in the Sudan, as Special Co-ordinator.

9. A comprehensive document on urgent humanitarian requirements for the Sudan prepared by the Government of the Sudan in collaboration with the United Nations was issued in November 1988. As regards the overall emergency strategy, the document stated that the first objective was to reduce the incidence of famine, starvation and disease in the transitional zone and in the south by increasing the delivery of food using all transport means available, including road, rail, river and air.

10. Although a delivery programme was instituted, owing to a complex of factors, including disruptions resulting from war strife, the movement of food and other relief supplies into the south was inadequate.

11. In order to avoid a repetition of the mass starvation which had occurred in southern Sudan during the rainy season in 1988, the Government and the United

Nations held a high-level meeting in March 1989 to launch a programme to pre-position massive quantities of food and relief supplies in the affected areas, including those not controlled by the Government, prior to the onset of the rainy season in July. The operation subsequently became known as "Operation Lifeline Sudan".

12. The United Nations Special Co-ordinator was made responsible at the country level for the co-ordination of the United Nations system activities and for liaison with the Government and donors. The Executive Director of UNICEF was appointed the Secretary-General's Personal Representative, with a mandate to contact Governments and international organizations at the highest level to mobilize support for "Operation Lifeline Sudan". He also serves as a point of contact with the Sudan authorities and insurgent forces in matters relating to the safe passage of convoys through "corridors of tranquillity". By the end of July, a total of 85,000 metric tons of supplies, out of a targeted figure of 120,000 metric tons, was pre-positioned at various points in southern Sudan, ready for distribution.

13. At the Khartoum meeting, the cost of the total operation was estimated at some $133 million, out of which some $77 million were available. By the end of May, the balance of $55 million had been raised in cash. However, as the operation progressed, additional financial needs were identified, principally as a result of the recognition that the operation, which had originally been scheduled to terminate on 30 June, would be required to continue until the end of 1989. As of July, it was estimated that $50 million was still required, principally for programmes of WFP, UNICEF, FAO and ICRC.

Somalia

14. The Secretary-General was requested by the General Assembly in its resolution 43/206 of 20 December 1988 to continue his efforts to mobilize international assistance and to co-ordinate efforts of the appropriate agencies of the United Nations system in order to respond in a concerted and effective manner to the request of the Government of Somalia for humanitarian assistance.

15. Pursuant to that resolution, an inter-agency mission was dispatched to Somalia in February 1989. In its report, the mission recommended an interim programme of assistance to meet the urgent requirement of approximately 67,500 persons who had been specifically identified by the Somali authorities as having been displaced by the conflict in northern Somalia. The assistance programme would include an initial one-time food aid contribution covering requirements for a three-month period, to be followed by a special ration of food to be given for a period of six months to those who returned to their place of origin. It also included rehabilitation of water systems, assistance in basic health care, hospital rehabilitation and the re-establishment of basic services.

16. The mission noted that when other displaced groups were identified, a more substantial programme of assistance, involving not only humanitarian help, but also assistance for rehabilitation and reconstruction, would be required.

17. To deal with the situation, additional staff has been posted to the office of the Resident Co-ordinator who also serves as Special Co-ordinator for emergency relief operations. Also the Director for Special Emergency Programmes visited Somalia in June 1989 to assess the situation and consult with Somali authorities on ways and means of improving the organization and distribution of humanitarian relief supplies.

18. Both the General Assembly as well as the Economic and Social Council have already called upon all States and pertinent international and non-governmental organizations to contribute generously to meet the urgent needs identified by the United Nations inter-agency mission.

19. Unfortunately, the political situation in the north-west continues to impede the activities of the United Nations system in the area, and has made difficult the delivery of emergency relief supplies to the affected population.

20. Close contact is being maintained with the Somali authorities so that as the situation improves in the affected provinces, it will be possible to expand humanitarian assistance to meet the needs of those who are currently inaccessible.

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

[Original: English]

[25 September 1989]

1. It is the firm belief of UNHCR that the principles of human solidarity as expressed in General Assembly resolutions 43/129 and 43/130 of 8 December 1988 are both fundamental and indispensable to the search for solutions to global refugee problems. As the High Commissioner declared, inter alia, in the course of a speech delivered in Geneva in December 1988 on the occasion of the fortieth anniversary of the Universal Declaration on Human Rights, "what distinguishes the many millions of refugees in the world today from other victimized groups is their inability, be it temporary or otherwise, to return to their countries in security and their resulting dependence on international protection. The provision of this protection requires a co-operative effort by States, carried out through the agency of UNHCR and within the framework of agreed international responsibilities. Beyond these responsibilities, however, there is a moral dimension to refugee protection which States have explicitly recognized. Ultimately the protection of refugees is not so much dependent on international conventions as it is on the collective conscience of nations."

2. It has long been recognized by the international community, and reflected in resolutions of the General Assembly, that refugee problems are international in character and scope. In the same spirit, it is broadly accepted that international solidarity is the main guiding principle determining international resolution of refugee problems. Through international solidarity States are assisted in meeting their protection responsibilities, including those relating to provisions of asylum, while with their assistance and co-operation, the fulfilment by the High Commissioner of his humanitarian functions is facilitated.

3. The UNHCR intergovernmental Executive Committee had cause to consider the relationship between international solidarity and refugee protection at its thirty-ninth session in 1988. It adopted a set of conclusions. Through these conclusions the Committee, inter alia, expressed its deep concern about the gravity and complexity of refugee problems throughout the world, the serious violations of human rights which accompany them and the dislocation and distress they cause for the millions of individuals involved; reaffirmed that resolution of refugee problems is dependent on the will and capacity of States to respond in concern and whole-heartedly, in a spirit of true humanitarianism and international solidarity.

4. With these considerations in mind, UNHCR actively promotes international co-operation on humanitarian issues in the sphere of refugee protection. During 1989 it played a key role in the organization of two international conferences designed to heighten awareness of and find solutions to the plight of millions of refugees, asylum-seekers, returnees or displaced persons respectively in Central America and South East Asia. The first was the International Conference on Central American Refugees, held in Guatemala from 29-31 May 1989 in collaboration with UNDP and on the initiative of Costa Rica, El Salvador, Guatemala, Honduras, Mexico and Nicaragua. Its purpose was to propose new solutions to the problem of refugees and displaced persons in the region's affected countries. Such solutions will be formulated within a development framework that will also address the needs of the host communities including their displaced persons.

5. The second was the International Conference on Indo-Chinese Refugees, held in Geneva from 13-14 June 1989. UNHCR acted as secretariat to this Conference and chaired numerous preparatory meetings needed for its preparation. The Conference adopted a Comprehensive Plan of Action outlining the elements of a possible solution to the problem posed by the continued outflow of Indo-Chinese asylum-seekers. The Plan of Action underscored the spirit of mutual co-operation that should prevail among the countries concerned and the need for them to consult regularly to ensure effective implementation and co-ordination of the measures adopted.

6. UNHCR has also been active in encouraging States to accede to the regional and international instruments relating to refugees, notably the 1951 Convention and 1967 Protocol. There are now 106 States parties to one or both of these instruments. Hungary is the most recent contracting State and Bangladesh has declared its intention to accede in the near future.

7. The establishment of a new international humanitarian order founded on international solidarity and agreed humanitarian principles and practices is only to be welcomed. It holds out the prospect of meaningful co-operation between all members of the international community in the common pursuit of solutions to the humanitarian problems of our times. These include the plight of the some 14 million refugees world wide. In this regard UNHCR is a sympathetic and committed supporter of this initiative on behalf of millions of refugees world wide.

OFFICE OF THE UNITED NATIONS DISASTER RELIEF CO-ORDINATOR

[Original: English]

[11 July 1989]

1. General Assembly resolution 43/131 is specifically concerned with the work of UNDRO in bringing humanitarian assistance to the victims of disasters, and calls for a report to be made by the Secretary-General to the forty-fifth session of the General Assembly.

2. As a first step, an informal inter-agency working group was convened in Geneva on 8 and 9 March 1989 to establish precisely where and in what form obstacles occurred that prevented international organizations from being as effective as they would wish in emergency relief operations, and how these difficulties could be overcome with a view to increasing the speed of delivery of humanitarian assistance.

3. The Office will be responsible for preparing the Secretary-General's report called for by paragraph 8 of resolution 43/131. The Secretary-General's report will, of course, include the results of the recent inter-agency meeting.

B. Specialized agencies

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

[Original: English]

[5 May 1989]

1. FAO shares the concern expressed by the General Assembly about the growing humanitarian challenges and the need to respond to them with properly co-ordinated international action aimed at promoting a new international humanitarian order. It therefore fully subscribes to the substance and approach of General Assembly resolutions 43/129 and 43/130.

2. At this stage, however, FAO is not in a position to indicate what type of action would be more appropriate for strengthening international co-operation in the humanitarian field. Should the General Assembly resolutions entail follow-up action at the international level in favour of specific categories of disadvantaged rural people such as landless workers, rural migrants, nomadic pastoralists, or rural women, FAO would stand ready to provide the necessary technical support and assistance as well as to collaborate with other United Nations agencies towards promoting development and equity in favour of the vulnerable rural groups.

3. Within its mandate in agricultural and rural development, FAO continues to give priority attention to programmes and activities designed to promote the right of disadvantaged rural groups to food, means of production, health, education and employment. The right to food can be conceived as the right of people to food self-sufficiency and food security. The development of a world food security

system has been one of the major themes pursued by FAO in recent years. The main objective of the system is to ensure both physical and economic access to available food supplies on the part of vulnerable social groups. In this context, attention is also given to the special needs of the rural disabled, with emphasis on development activities aimed at reducing the causes of their disabilities and helping handicapped people to find appropriate employment and income opportunities.

4. The right of the affected people to participate in the planning and decision-making processes is also a matter of high priority, which FAO is actively pursuing through its People's Participation Programme. This is funded through its regular programme as well as through trust fund resources being provided by several donors. Special efforts are being made to help small farmers organize themselves through participatory procedures, thus contributing to their own self-reliance in development and to meeting their basic social and economic needs.

INTERNATIONAL LABOUR ORGANISATION

[Original: English]

[5 October 1989]

1. At the 242nd Session of the ILO Governing Body (February-March 1989), the International Organisations Committee had before it a document (GB.241/IO/3/2) on the report of the Independent Commission on International Humanitarian Issues.

2. In discussing this document, the International Organisations Committee agreed on the need for progress on humanitarian issues, and support was expressed for the work of the Commission. The relevance of ILO standards and activities to those issues was stressed. It was felt that emphasis should also be placed on the role of trade unions and on trade union rights, the economic aspects of development and the role of private enterprise. Reference was also made to the need for further work for the protection of children and to demographic problems in respect of social and economic objectives.

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

[Original: English]

[10 July 1989]

UNESCO noted with interest resolution 43/129. As for resolution 43/130, the following activities are being undertaken by UNESCO in the field of humanitarian issues:

(a) Dissemination of international humanitarian law:

(i) A manual for university teaching "Les dimensions internationales du droit humanitaire" was published in co-operation with the Henry Dunant Institute (French version in 1986; English version in 1988);

(ii) A monograph "The Treatment of Prisoners under International Law" was published in 1987 by Clarendon Press Oxford/UNESCO. The Spanish version will be published this year;

(b) An emergency relief fund was created by the Executive Board at its 129th session. The Government of Cameroon has so far provided funds;

(c) Under the regular programme, assistance has been given for rebuilding school projects after emergency situations in the following countries: Afghanistan ($160,000), Bangladesh ($100,000), Mozambique ($142,250), Nepal ($100,000), Sudan ($100,000), Nicaragua ($167,000), Costa Rica ($35,000), and the Union of Soviet Socialist Republics ($33,000).

IV. REPLIES RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS IN CONSULTATIVE STATUS WITH THE ECONOMIC AND SOCIAL COUNCIL

INTERNATIONAL FEDERATION OF RESISTANCE MOVEMENTS

[Original: French]

[11 October 1989]

1. The International Federation of Resistance Movements has always been committed to strengthening the defence of human rights. In taking such a stand, the Federation is acting in accordance with article IV (2) of its statutes, which specifies the goals of the Federation in these terms: "To fight actively, in order to defend and guarantee freedom and human dignity, against all racial, political, philosophical or religious discrimination and against neofascism and neonazism in any form".

2. As a consequence of its moral commitment, the Federation participates fully in the activities of the Special Committee of International NGOs on Human Rights in Geneva and of the Working Group on Human Rights of the NGO Standing Committee of UNESCO in Paris. It regularly attends the meetings of those bodies.

3. Furthermore, at their meetings, the governing bodies of the Federation give extensive consideration to human rights problems; the ways in which human rights can be defended; and the achievement of the widest possible international co-operation. Their concerns in this area are reflected in the documents which are adopted (resolutions, motions, etc.).

4. Thus, for example, meeting in September 1988 in Mariánské Lázně (the Czechoslovak Socialist Republic), the Bureau of the Federation emphasized in an "Address to the 35 States participating in the Conference on Security and Co-operation in Europe" the need to "develop human, civil and political rights as well as economic, social and cultural rights and to ensure the respect for and observance of these rights through the adoption of laws and regulations ...". Similarly, the Federation's Executive Committee, which met in Warsaw on 4 September 1989, reaffirmed unanimously that special attention has been accorded

to the "human dimension" of the Conference on Security and Co-operation in Europe and noted that this "human dimension" is considered to be one of the basic elements of the process, a viewpoint which "former members of the Resistance could not fail to welcome". The Address was distributed widely and was sent to the heads of delegations of the 35 States participating in the Conference on Security and Co-operation in Europe at Vienna.

5. Elsewhere, the Federation made a special contribution to the development of international human rights co-operation by sending a delegation to Israel in November 1988; its mandate was to "inform the authorities and the public of the positions of the International Federation with respect to the Israeli-Palestinian conflict and to study the general situation". During its visit to Israel, the Federation delegation was able to meet not only State officials, Parliamentary deputies and representatives of Jewish organizations but also key Palestinian figures and organizations from the occupied territories. In the course of these interviews, the representatives of the Palestinian people urged the Federation delegation to promote respect for the Geneva Convention relative to the Protection of Civilian Persons in Time of War and the Protocol additional to the Geneva Conventions, relating to international humanitarian law applicable in armed conflicts. The Federation responded to that request by issuing a full report on the delegation's visit to Israel. The report, published in the form of a brochure with a printing of 1,000 copies, was sent to all the national and international agencies, Governments, and specialized agencies concerned. The Federation's Department of Information also gave extensive coverage to the visit.

INTERNATIONAL INSTITUTE OF HUMANITARIAN LAW

[Original: English]

[29 September 1989]

1. The International Institute of Humanitarian Law would like to congratulate the excellent work done by the Independent Commission on International Humanitarian Issues which adopted and published very good conclusions and recommendations on different humanitarian issues and to express the hope that competent international and national organizations will follow these recommendations which certainly demand a systematic and organized work.

2. The work of the Institute, which is a private, independent and non-profit organization, created in 1970 and whose primary and fundamental objective is to promote the application, development and dissemination of international humanitarian law in all its dimensions and to contribute to the safeguard and respect of human rights and fundamental freedoms throughout the world, is completely in the line of the recommendations made by the Independent Commission.

3. The programme of activities of the International Institute of Humanitarian Law for 1989 has been already completed with very good results.

4. The military courses organized regularly each year are intended for operational military people in order to strengthen the application and dissemination of international humanitarian law and human rights in armed conflict situations.

5. The refugee law courses regularly organized every year are intended for governmental people responsible at national level for the protection of refugees. These courses give excellent results because governmental officials attending workshops can examine difficult refugee situations and find sometimes, through a direct dialogue, appropriate solutions.

6. Two years ago, in co-operation with the United Nations Centre for Human Rights, the Institute started to organize human rights courses, also intended for governmental people. The main goal of these courses is to establish a dialogue among governmental officials who are in charge of implementing human rights at national level and to report to competent United Nations bodies on the respect and implementation of human rights at national level.

7. The Institute established a very good dialogue with experts of different groups of countries. The experts discussed current problems in the field of international humanitarian law, human rights and refugee law. This kind of dialogue, in particular gave very good results with Arab experts and experts of socialist countries in Europe.

8. Besides the above-mentioned meetings, the Institute organizes working sessions for small groups of experts to deal with specific humanitarian issues; for instance we organized this year a meeting of experts to discuss the problems of the use of chemical weapons. Another meeting was organized to discuss the question on the solutions of refugees.

9. Finally the Institute organizes every year its traditional round table on current problems of international humanitarian law. In September of 1989, more than 160 experts from all over the world discussed the problem of non-international armed conflicts. After a very constructive debate regarding the protection of refugees, the participants adopted a Declaration on the protection of refugees, asylum seekers, displaced persons. With this Declaration, the round table wants to reinforce the general protection of refugees and encourage the Office of the United Nations High Commissioner for Refugees to develop further refugee law. The round table also dealt with the problem of the conduct of hostilities and the use of certain weapons, in particular chemical weapons in non-international conflicts. The Red Cross and Red Crescent people discussed the problem of the role of national societies in non-international conflicts. The Institute will publish the complete documentation on this round table in its 1989 Yearbook.

10. The work of the Independent Commission encourages a great number of international non-governmental organizations which are preoccupied by the protection and assistance to victims in different distressed situations.

11. The Institute will continue its efforts to strongly reinforce the humanitarian dialogue within different tendencies in the field of human rights, international humanitarian law and refugee law. The 1990 programme of activities will be published very soon.

INTERNATIONAL LEAGUE FOR THE RIGHTS AND THE LIBERATION OF PEOPLES

[Original: French]

[28 May 1990]

1. The International League for the Rights and the Liberation of Peoples wishes to make the following comments on humanitarian law applicable in armed conflicts. These comments relate to three points: (a) the status of the ratifications of the additional Protocols of 1977; (b) the obligations of the signatory States of the Geneva Conventions of 1949; (c) the responsibilities of non-governmental organizations.

Status of the ratifications of the additional Protocols of 1977

2. The two Protocols additional to the Geneva Conventions of 1949 represent indisputable progress in humanitarian law. They broadened substantially the scope of application of the Geneva Conventions, with respect to the situations concerned as well as the persons protected.

3. Protocol I, relating to international conflicts, recognized as such "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations ...".

4. Protocol II relates to conflicts "which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or armed groups which, under responsible command, exercise such control over a part of its territory ...".

5. It is deplorable that the number of States which have ratified these additional Protocols is nowhere near the large number of States which have acceded to the Geneva Conventions, thus giving those instruments a universal character.

6. In fact, in 1988, out of the 171 known States in the world (159 of them Members of the United Nations), 165 States were Parties to the Geneva Conventions, 71 were Parties to Protocol I and 64 were Parties to Protocol II. It should be noted that very few States have ratified both Protocols.

7. Such a situation cannot fail to be of concern, just as it was to the Independent Commission on International Humanitarian Issues which, in 1985, sent out a memorandum to more than 100 Governments, followed by a reminder in 1987, inviting them to ratify the 1977 Protocols. Thus far, the Commission has had very little response.

8. The League hopes that the Commission will continue its efforts in this direction and make even more urgent appeals to States to ratify the two Protocols.

Obligations of the signatory States of the Geneva Conventions of 1949

9. Irrespective of when and if more States accede to the 1977 Protocols, it is essential that the Geneva Conventions, the universal nature of which is incontestable, be respected by everyone throughout the world. Unfortunately, this is very far from being the case.

10. It should be recalled in this connection that article 1 of the four Conventions provides: "The High Contracting Parties undertake to respect and to ensure respect (our emphasis) for the present Convention in all circumstances".

11. This provision, which is unusual in treaty law in that it obliges the signatory Parties not only to respect the obligations laid down in the Conventions but also to ensure respect for them, should motivate all Governments to apply the necessary pressures to the parties in a conflict without being subject to the objections of interference or the absence of reciprocity.

12. In addition to the action which each State can take in order to ensure respect for the humanitarian norms set forth in the Geneva Conventions, there are actions which can be undertaken jointly with other States or in collaboration with the United Nations, in the event of serious violations.

13. If effectively carried out, this permanent monitoring of the application of humanitarian law in armed conflicts could help to lessen the suffering resulting from war or occupations.

14. It is unfortunate that most Governments attach so little importance to their obligation to ensure respect at all times and in all places for the provisions by which they are bound by virtue of their accession to the Geneva Conventions.

15. Such respect appears to be as necessary in international armed conflicts as in armed conflicts which are not international in scope, since, in the latter case, the minimal protection of the rights of the individual, as recognized in article 3 of all four Conventions, is very rarely guaranteed in practice.

16. The League hopes that the Independent Commission on International Humanitarian Issues will transmit to all States an urgent and solemn reminder of their obligation to ensure respect for the Geneva Conventions of 1949.

Responsibilities of non-governmental organizations

17. It is also highly unfortunate that most of the non-governmental organizations involved in the defence of human rights pay very little attention to the humanitarian law applicable in armed conflicts.

18. Yet, it is in situations of armed conflict or military occupation that human rights are most often ignored. It is particularly in such situations that public

opinion should be alerted so that a minimum of human rights are recognized for combatants and civilian populations and so that, in spite of all the obstacles, these rights are respected.

19. In recent years, there has been an increase in international and internal conflicts throughout the world, while the victims of these conflicts have failed to benefit from the minimum protection accorded them by humanitarian law. Millions of human beings are suffering tragically because of this lack of protection.

20. It would be desirable if those non-governmental organizations concerned with the defence of human rights used all their influence with the public, Governments, various armed groups, and international forums to which they have access, in order to promote respect for the application of humanitarian law in armed conflicts.

21. It is vital that the non-governmental organizations support the appeals by the International Committee of the Red Cross for all the signatory States of the Geneva Conventions to respect and to ensure respect for the Conventions. By 1987, 74 public appeals had been made over the 40 previous years; since that time, further appeals have been launched.

22. The League hopes that the Independent Commission on International Humanitarian Issues will call upon the non-governmental organizations involved in the defence of human rights to mobilize in support of the application of humanitarian law in armed conflicts.

INTER-PARLIAMENTARY UNION

[Original: English]

[4 July 1989]

The Inter-Parliamentary Union enclosed the texts of relevant resolutions and decisions. (For the text of the resolutions submitted, see A/43/759, annex, pp. 7-13, and A/44/240/Corr.1.)

1986 October session of the Inter-Parliamentary Union,
Buenos Aires (Argentina), 6-11 October 1986

THE CONTRIBUTION OF PARLIAMENTS TO THE APPLICATION AND PROGRESS OF HUMANITARIAN INTERNATIONAL LAW APPLICABLE IN CASES OF ARMED CONFLICTS

(Resolution adopted without a vote)

The 76th Inter-Parliamentary Conference,

Mindful of the need to eradicate the scourge of war and armed conflicts of all kinds which threaten human dignity and inflict unspeakable sufferings on mankind, and underlining in particular the importance of preventing nuclear war, which endangers human existence,

Deploring the grave humanitarian consequences of armed conflicts, such as loss of human lives, prolonged detention of persons involved in hostilities as well as others, torture or other forms of cruel, inhumane or degrading treatment, separation of families, forced displacement of persons, mass refugee movements and destruction of property,

Stressing the absolute need to protect and assist victims of armed conflicts, whatever the nature and form of those conflicts or the origin of the victims,

Recalling the international conventions of a humanitarian nature, in particular the four Geneva Conventions of 12 August 1949 relating to the protection of victims of armed conflicts and their two additional Protocols of 8 June 1977,

Reaffirming the right afforded to freedom-fighters and other combatants such as defined under additional Protocol I of 1977 to enjoy the status of prisoners of war,

Recalling the Convention adopted on 10 October 1980 on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects, together with the Protocol on Non-Detectable Fragments, the Protocol on Prohibitions or Restrictions on Use of Mines, Booby Traps and Other Devices, and the Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons,

Noting that in times of armed conflicts, the most basic humanitarian rules which protect persons who are hors de combat and the civilian population are frequently violated,

Recalling that by virtue of the Geneva Conventions of 1949 States have the duty not only to respect international humanitarian law but also to ensure that it is respected,

Paying tribute to the governmental and non-governmental international organizations whose activities help to alleviate the sufferings of persons affected by armed conflicts,

Stressing above all the mission of the International Committee of the Red Cross (ICRC) in case of armed conflict which, by virtue of its mandate laid down in the Geneva Conventions and their additional Protocols, protects and assists victims of armed conflicts, in conformity with its principles which are, among others, humanity, neutrality and impartiality,

Recalling that the independence of the ICRC in relation to influences which may be exerted by Governments, parties to a conflict, military commands and other authorities is one of the prerequisites for the execution of its duties,

Noting the broadening of the ICRC's protection and assistance activities the world over, which implies significantly higher expenditure levels,

Regretting that nearly a decade after their adoption, the two Protocols additional to the Geneva Conventions, one of which concerns international armed conflicts and the other non-international armed conflicts, adopted on 8 June 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, have only been ratified by a small number of States,

Stressing the importance of those Protocols, which contain new rules for new types of armed conflicts and which considerably strengthen the protection of the civilian population against the effects of hostilities,

Underlining the need to reaffirm and develop provisions protecting the victims of armed conflicts and to supplement measures intended to reinforce their application and to that end to continue the codification and progressive development of the rules of law applicable in armed conflicts,

Recalling the XXVth International Conference of the Red Cross (23-31 October 1986), the highest deliberating body of the International Red Cross which will also be called upon to study humanitarian problems caused by armed conflicts and to propose solutions, in the presence of representatives of States parties to the Geneva Conventions,

Emphasizing the role of Parliaments in contributing to the application and progress of international humanitarian law applicable in cases of armed conflicts,

1. Solemnly appeals that the rules of international humanitarian law and universally recognized humanitarian principles be respected at all times and under all circumstances;

2. Calls on Parliaments and Governments:

(a) To give priority to humanitarian problems arising from all kinds of armed conflicts and to work actively to solve them;

(b) To commit themselves at national and international levels to ensuring that international humanitarian law is accepted and respected by all and under all circumstances;

(c) To support efforts aimed at increasing public awareness of the whole range of activities carried out by the International Red Cross, especially those of their own National Society;

(d) To devote all their attention to the duty incumbent on them, by virtue of the Geneva Conventions, to disseminate the principles of international humanitarian law, especially in the armed forces;

(e) To provide the ICRC with any kind of support it may need to fulfil its humanitarian mission;

(f) To hasten the procedure of ratification of the two Protocols additional to the Geneva Conventions of 12 August 1949, one of which relates to the protection of the victims of international armed conflicts and the other to the protection of victims of non-international armed conflicts, both adopted on 8 June 1977, or the procedure of accession to those instruments;

(g) To take all measures in the field of national legislation which are necessary to ensure respect for international humanitarian law;

3. Urges all States that have not done so to become parties to the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects and its Protocols I and II;

4. Notes that under Article 8 of that 1980 Convention, conferences may be convened to review or amend the annexed Protocols, or to adopt additional Protocols relating to other categories of conventional weapons;

5. Praises the humanitarian activities of the Office of the United Nations High Commissioner for Refugees (UNHCR), the ICRC and other international relief agencies, and calls on all nations to contribute more generously to the budgets of those institutions;

6. Stresses that respect for the decisions of the International Court of Justice and other jurisdictions can strengthen humanitarian law;

7. Calls on Governments to participate actively in the XXVth International Conference of the Red Cross, which will be held from 23 to 31 October 1986 in Geneva, in a spirit of constructive dialogue so as to strengthen respect for international humanitarian law and alleviate the condition of victims of armed conflicts.

WORLD MUSLIM CONGRESS

[Original: English]

[23 September 1989]

I. ISLAM AND THE UNITED NATIONS

1. The World Muslim Congress confirms the principles of the Islamic mission and its universal human values, the need to set up a new international humanitarian order based on the unity of the human family and human interest without any discrimination, the necessity for all nations and groups to honour and appreciate one another and for all their international and regional organizations to co-operate in order to protect the dignity of man and his basic rights, and the importance of emphasizing the right of all to enjoy life in dignity, freedom and justice.

2. The World Muslim Congress declares the necessity for all nations and peoples to co-operate in efforts for the good of mankind and in the prevention of injustice and violation of the basic human rights, for the support of all the basic principles on which the United Nations has been established for the benefit of human society and permanent peace, and for welcoming United Nations endeavours towards the protection of the freedom and security of man and his rights to self-determination, especially the United Nations unanimous declaration of the elimination of all forms of neo-colonialism, racism and religious intolerance, and also its recognition of the inherent right of all nations to full sovereignty and self-determination according to the wishes of their peoples.

II. THE POLITICAL QUESTION

3. Whereas the World Muslim Congress reconfirms its belief in the Islamic universal values and decidedly calls for their respect in the best interest of the human family and its common security, and whereas it also supports the principles of the United Nations, the Congress condemns repeated Israeli violation of international law and United Nations resolutions, Israel's aggression against her Arab neighbours, especially Israel's continuous aggression against Lebanon over the last few years.

4. The World Muslim Congress firmly and strongly demands the immediate recognition of the legitimate rights of the Arab people of Palestine to self-determination and their rights of establishing their own government in accordance with the resolutions and decisions of the United Nations, the Organization of African Unity and Motamar.

5. The World Muslim Congress strongly condemns the Israeli violation and desecration of the sacred shrines in Palestine, particularly of the Aqsa and Ibrahimi mosques and the Israeli declaration of the sacred city of Al-Quds as her capital in violation of the United Nations and UNESCO resolutions, ignoring international law and all the legitimate rights of the Muslim population.

6. The World Muslim Congress also demands recognition of the same rights due to all peoples who are struggling for reacquisition of their freedom and of their sovereignty over their fatherlands, in accordance with the free wishes of the peoples and their individual right to self-determination.

7. The World Muslim Congress strongly condemns the Soviet military intervention in Afghanistan, a sovereign Member State of the United Nations.

8. The World Muslim Congress condemns the Philippines Government for the recent atrocities against the Muslims and demands cessation of such aggression. It demands a positive response to the aspirations of the Filipino Muslims and to the honour of the terms agreed to in Tripoli by the granting of a meaningful autonomy for ending violence and starting a new era of friendship, freedom and human dignity for all Filipino citizens.

9. The World Muslim Congress calls upon the Government of Ethiopia to respond to the people of Eritrea in their national struggle and to acknowledge their legitimate right to self-determination.

10. The World Muslim Congress fully supports all just demands of the right of self-determination, be it in Kashmir, South Africa, etc.

11. In the historic Tokyo Seminar of 1981, the World Muslim Congress had commended the Makkah Declaration of the Muslim Summit Conference held in January 1981, especially its call to hold fast to the principles of the Islamic mission and its values for the common good of the Muslim world and indeed the entire world. In this connection, the Congress hopes that all authorities in all Muslim countries shall examine their governmental structures with a view to refining them to conform with objectives of the Makkah Declaration; with particular reference to the respect of the "shura" (consultation) principles, as well as the will of Muslim peoples.

12. The World Muslim Congress calls upon all peoples of India, Muslims and non-Muslims to seek to build bridges of peace and co-operation between themselves to endeavour to solve their own differences among themselves on the basis of justice, freedom and peaceful co-existence.

13. The World Muslim Congress notes with deep concern the unspeakable condition of Muslims in Eastern Europe, particularly in Bulgaria where there is a complete denial of basic human rights to all citizens and recommends that these violations be examined by the Commission on Human Rights.

14. The World Muslim Congress, while noting the conditions of Muslim immigrants in the West, especially in Europe, hopes that the Governments of these countries will grant similar benefits and facilities, especially religious and educational to the immigrants as are provided for their own citizens.

15. The World Muslim Congress fully supports Turkish Cyprus (Kibris) in her just aspirations and constant efforts towards a peaceful solution of the Cyprus question.

16. The World Muslim Congress condemns apartheid in South Africa and fully supports the independence of Namibia in accordance with the resolutions and decisions of the United Nations.

17. The World Muslim Congress expresses the hope for closer co-operation between the Organization of Islamic Conference, an organization representing the Muslim countries, the Organization of African Unity and the United Nations Organization.

III. THE ECONOMIC QUESTION

18. The World Muslim Congress acknowledges with thanks that the United Nations has expressed its deep concern at the lopsided and unbalanced economic situation of the world. It expressed no hope for a correct solution being reached by the conflicting systems prevalent in the world today, namely the one system laying all its emphasis on more and more production and creation of cartels and monopolies, and the other laying all its emphasis solely on distribution, when the world needs a harmonious blend of the two systems with necessary checks and balances on both sides.

19. The World Muslim Congress commends that the Islamic economic system is unique in its character and approach. It stresses moderation and avoids excess; it has no place either for niggardliness or extravagance. It condemns with equal emphasis both wastefulness and parsimony; it opposes extremism in all forms or shapes. It allows the holding of private property but reminds man that such holdings should be considered as "trust for God". Islam's moral restraints act as deterrents to likely social evils induced by overwhelming wealth. The Western socio-economic order strives to maximize the rate of growth in savings, in investments, etc., through which the optimization of socio-economic welfare is sought. The Islamic socio-economic system, however, aims at evolving a just society through the channels of a profit and loss system, through welfare institutions such as "zakat" (alms giving) and by providing opportunities for more services all aiming at building a welfare society based on justice. One of the distinctive features of the Islamic socio-economic order is the institutionalization of the concept of States becoming welfare States through practical integration of religious, ethnical, social, political, economic and cultural values, all blended to produce an inimitable society. The essential elements of the Islamic economic order, zakat, prohibition of "riba" (usury) and ordinance of inheritance, aim at correcting the social malaise of unequal relationship and aim for the enhancement of human brotherhood, social security and individual responsibility.

20. The "Makkah Declaration" adopted at the Third Islamic Summit in Taif, Saudi Arabia (January 1981), briefly reiterates the fundamental values of Islam that can greatly alleviate the present economic, political, cultural and other ills of the world, and that can redress the imbalances between developing and developed countries. The countries of the Islamic world stand ready to participate fully and effectively on an equal basis with all other countries in solving world economic problems and in strengthening the role of the United Nations in the implementation of the new international economic order.

IV. THE SECURITY QUESTION

21. The World Muslim Congress believes that Islam provided an in-built system of peace and security and that in an Islamic order, internal and external peace and security receive as much emphasis as other essential needs of society such as food, clothing, housing, education, medical care, religious needs, etc. The World Muslim Congress, therefore, agrees that peace and security are necessary both within and without the State, and that for their protection no State should hesitate in entering regional and international arrangements with others.

22. The World Muslim Congress notes with concern and anxiety the growing trend towards international terrorism and hijacking threatening the lives of innocent persons and urges the world Powers to eradicate these threats to international peace and security.

23. Islam's emphasis is on equity and justice for all and in all branches of life, be it social, economic, political or any other aspect of national or international life. A nation should not only ask for the safety of her rights but should also safeguard the just rights of other nations. The World Muslim Congress therefore, rightly reiterates the fundamental values as detailed by Islam and whose framework so clearly spells out the most effective bases from which to build better co-operation and co-ordination for greater human solidarity.

V. EDUCATIONAL, CULTURAL AND SOCIAL QUESTIONS

24. The World Muslim Congress epitomizes the hopes and aspirations of the fifteenth century of the Islamic calendar: the century of peace, progress and just rights for all mankind, and the century of Islamic reawakening and resurgence boosting the basic Islamic values which are equated with basic human values.

25. All countries are not enjoying the high percentage of literacy as in the North and therefore the first focus the World Muslim Congress believes should be on the popularization of universal primary education, followed by higher education at all levels both in the humanities and the sciences and with the universal human aspect emphasized at every stage. "Each one teach one" should be popularized as a slogan to kill the "demon of ignorance" the world over, especially among Muslims.

26. With the aim of giving new dimensions to education, the World Muslim Congress urges that the education system must not only be concentrated on language, arts and science but must also emphasize the ethical and moral values of religion for peace and co-operation.

27. The World Muslim Congress also emphasizes that on the eve of the twenty-first century, the United Nations and other international organizations should jointly concentrate on giving the message of peace and co-operation through the development process and through different aspects of social welfare and medicare work.

28. The World Muslim Congress notes that for the work of moral re-armament and spiritual ethics, all branches of the mass media must be fully used. This should

not be limited to preaching by word of mouth or by publishing books, booklets and brochures, but by correct projection on radio and on television in order to reach a wider audience with the message of peace and spiritual ethics.

29. The World Muslim Congress agrees that through the three-pronged approach of spreading education, of popularizing welfare services and of using the mass media, the United Nations work can be much more useful and effective in the popularization of the idea of global human solidarity based upon fraternal love and understanding; in the paving of the way for establishing an equitable and just world order; in saving the world from the scourge of destructive wars (especially a nuclear holocaust) and unnecessary class conflicts; and in the promotion of peace among all men, which is the message of Islam.

VI. CONCLUSION

30. The World Muslim Congress believes that for the greater good of the world, all smaller States should refrain from involvement in the conflicting ideologies and approaches of the super-Powers, and that United Nations with her combination of a universal cultural heritage and modernism, can serve as a beacon of light and hope for the future good of mankind.

31. The World Muslim Congress expresses the hope that the Muslim community of the world, living as majority in 50 Muslim countries and as minorities the world over, believing in Islam, the code of life for peace, justice, dignity, equal opportunities and harmonious living for all living beings, sincerely welcomes United Nations endeavours and on behalf of the Muslim people offers our firm support to the United Nations in creating a new peaceful and meaningful international humanitarian order, which is also the goal of Islam.